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Maps

SUPREME COURT OF THE UNITED STATES.

No. 335.

OSRIC H. KELLOGG, JOHN G. KELLOGG, ORCHARD KELLOGG, MARY S. KELLOGG, CAROLINE KELLOGG, MARGARET N. KELLOGG, TIMOTHY PARKER AND MARY C. PARKER, AND CHARLES BALLANCH, PLAINTIFFS IN ERROR,

vs.

ROBERT FORSYTH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED DECEMBER 11, 1865.

GOVERNMENT PRINTING OFFICE.

SUPREME COURT OF THE UNITED STATES.

No. 335.

URIEL H. KELLOGG, JOHN G. KELLOGG, ORCHARD KELLOGG, MARY E. KELLOGG, CAROLINE KELLOGG, MARGARET N. KELLOGG, TIMOTHY PARKER AND MARY C. PARKER, AND CHARLES BALLANCE, PLAINTIFFS IN ERROR,

vs.

ROBERT FORSYTH.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

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a UNITED STATES OF AMERICA, *Northern district of Illinois, ss:*

The United States of America to the judge of the circuit court of the United States for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a certain judgment in a plea which is in the said court before you, between Robert Forsyth, plaintiff, and Uriel H. Kellogg, John G. Kellogg, Orchard Kellogg, Mary S. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker, his wife, and Charles Ballance, defendants, a manifest error hath happened to the great damage of the said defendants, as by their complaint appears, and it being fit and proper that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are therefore commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with
b all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right and according to the laws and custom of the United States should be done.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this nineteenth day of April, A. D. 1865, and of the independence of the United States the 89th year.

WILLIAM H. BRADLEY, *Clerk.*

c United States of America to Robert Forsyth, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Uriel H. Kellogg, John G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret K. Kellogg, Timothy Parker, and Mary C. Parker, his wife, and Charles Ballance, are plaintiffs, and you are defendant in error, to show cause, if any there be, why the judgment in said writ of error mentioned, should not be corrected, and speedy justice done to the parties in that behalf.

Witness the honorable Thomas Drummond, one of the judges of said court, this 19th day of April, 1865.

THOMAS DRUMMOND.

Service of the above writ of citation is accepted this 20th day of April, 1865.

W. C. GONDY, *Attorney for Forsythe.*

Filed April 20, 1865.

WM. H. BRADLEY, *Clk.*

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. David Davis, one of the justices of the Supreme Court of the United States, presiding, and the Hon. Thomas Drummond, district judge of said district, associate judges of said circuit court, on Wednesday, the nineteenth day of April, in the adjourned March term of said court, in the year of our Lord one thousand eight hundred and sixty-five, and of our independence the ninetieth year.

WM. H. BRADLEY, *Clerk.*

ROBERT FORSYTH
vs.
URIEL H. KELLOGG, JOHN G. KELLOGG, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, Mary C. Parker, his wife, heirs-at-law of William Kellogg, dec'd, and Charles Ballance. } In ejectment.

DISTRICT OF ILLINOIS, *ss :*

2 Be it remembered that on the twenty-second day of December, in the year of our Lord one thousand eight hundred and fifty-four, came Robert Forsyth, plaintiff, by Messrs. Williams & Lawrence, his attorneys, and filed in the office of the clerk of the circuit court of the United States for the district of Illinois, at Springfield, in said district, his declaration in ejectment against William Kellog, defendant, together with a notice, bond for costs, and affidavit thereto attached; which said declaration, notice, bond, and affidavit are in the words and figures following, to wit:

Circuit court of the United States, December term, A. D. 1854.

UNITED STATES OF AMERICA, *State and district of Illinois :*

Robert Forsyth, the plaintiff in this suit, who is a citizen of the State of Missouri, one of the United States of America, complains of William Kellogg, defendant in this suit, who is a citizen of the State of Illinois, in the United States of America, of a plea whereof he, the said defendant, with force and arms, &c., entered into the

3 following described premises: for that whereas heretofore, to wit, on the first day of November, in the year of our Lord one thousand eight hundred and fifty-four, the said plaintiff was possessed of certain premises situated at and within the county of Peoria, district and State of Illinois, and described as follows, to wit, a part of claim numbered seven in the village of Peoria, in the State of Illinois, as confirmed to Thomas Forsyth by an act of Congress approved March 3d, A. D. 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," commencing at the most easterly point or corner of said claim or lot No. seven, at the point where First street and the cross-street B intersect each other; thence along First street and the southeasterly line

of said claim eighty-two feet; thence at right angles with First street and parallel with the cross-street B one hundred and one feet to Water street as laid off in Bigelow & Underhill's addition to Peoria; thence along the lower or southeasterly edge of Water street seventy-eight feet to cross-street B; thence along said cross-street B ninety-two feet to the place of beginning, it being a part of lots one and two in block No. fifty in Bigelow and Underhill's addition to Peoria.

4 And the said plaintiff, being then and there so possessed of said premises, he, the said defendant, afterwards, to wit, on the second day of November, in the year aforesaid, entered into the said described premises, and from the time last aforesaid has unlawfully withheld, and does now unlawfully withold, the possession of the said premises from the said plaintiff; and the said plaintiff avers that he claims the title to the said premises in fee simple, and that the said plaintiff is a citizen and inhabitant of the State of Missouri, in the United States of America, and that the said defendant is a citizen and inhabitant of the State of Illinois, in the United States of America; and the said plaintiff further avers that the value of the aforesaid premises, being the matter in dispute, exceeds, exclusive of costs, the sum of five hundred dollars; wherefore the said plaintiff says he is injured and has sustained damage to the amount of five hundred dollars, and therefore he brings suit. &c.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiff.

You are hereby notified that the declaration, with a copy of which you are now herewith served, and to which copy this notice is subjoined, will be filed in the circuit court of the United States

5 for the district and State of Illinois on the first day of the December term, A. D. 1854, or as soon thereafter as counsel can be heard, and that upon filing the same a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of said rule, and if you neglect so to appear and plead a judgment by default will be entered against you and the plaintiff will recover possession of the premises specified in the said declaration.

Dated this 16th day of November, A. D. 1854.

WILLIAMS & LAWRENCE,
Attorneys for Plaintiff.

Circuit court of the United States, December term, A. D. 1854.

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } In ejectment.

UNITED STATES OF AMERICA, *State and district of Illinois:*

I do hereby enter myself security for costs in this cause, and acknowledge myself bound to pay or cause to be paid all costs which may accrue in this action either to the opposite party or to any of the officers of this court, in pursuance of the laws of this State.

Dated this sixteenth day of November, A. D. 1854.

GEORGE W. FRIDLEY.

6 Personally served on William Kellogg, the defendant in this suit, who is the actual occupant of the premises for which this action is brought, with a true copy of the declaration hereto annexed, and also a true copy of the notice in writing to the said declaration subjoined and likewise annexed.

Peoria, November the 18th, A. D. 1854.

HARRY WILTON,
U. S. Marshal, District of Illinois.
By M. R. OWEN, *Dept. Marshal.*

Indorsed: Filed Dec. 22, 1854.

WM. POPE, *Cl'k.*

On this day, to wit, the 23d day of December, in the December term, A. D. 1854, of said court for said district of Illinois, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

This day came the plaintiff, by his attorneys, and filed his declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant,

7 it is ordered, on motion of said plaintiff, by his said attorneys, that defendant plead thereto in twenty days or that his default be entered.

On this day, to wit, the 10th day of July, A. D. 1855, came said defendant, by his attorney, and filed in the office of the clerk of said court for the northern district of Illinois his plea in said entitled cause; which said plea is in words and figures following, to wit:

In the circuit court of the northern district of Illinois, July term, 1855, in ejectment.

ROBERT FORSYTH
vs.
WILLIAM KELLOGG.

Said defendant comes and defends, &c., and says he is not guilty of the trespass and ejectment in said declaration charged against him in manner and form as the same is therein and thereby set forth and alleged, and of this he puts himself upon the country, &c.

C. BALLANCE.

Indorsed: Filed July 10th, 1855.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the tenth day of July, in the July term,

8 A. D. 1855, of said court for the northern district of Illinois, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

Now at this day come the parties, by their attorneys, and upon issue joined by agreement of the parties, by their attorneys, they waive the intervention of a jury and for trial put themselves upon the court, and after proceeding with the trial of the cause until the hour of adjournment, the further trial of the cause is postponed until to-morrow morning.

On the next day, to wit, the eleventh day of July, in said July term, A. D. 1855, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

Now at this day come again the parties, by their attorneys, and after hearing the remainder of the evidence and the arguments of counsel, the court not being now sufficiently advised upon the issue submitted herein, take time to consider.

9 On the next day, to wit, the 12th day of July, in the July term, A. D. 1855, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

The court having now fully considered and being now fully advised upon the issue heretofore submitted in this cause, find the defendant guilty of unlawfully withholding from the possession of the plaintiff, the land and premises described in the plaintiff's declaration, to wit, "a part of a claim numbered seven, in the village (now city) of Peoria, county of Peoria, and State of Illinois, as confirmed to Thomas Forsyth by an act of Congress approved March 3d, A. D. 1823, entitled 'An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois,' commencing at the most easterly point or corner of said claim or lot No. seven, at the point where First street and the cross-street B intersect each other; thence along First street and the southeasterly line of said claim eighty-two feet; thence at right angles with First street and parallel with the cross-street B one hundred and one feet, to Water street, as laid off in Bigelow and Underhill's addition to Peoria; thence along the
10 lower or southeasterly edge of Water street, seventy-eight feet, to cross-street B; thence along said cross-street B, ninety-two feet, to the place of beginning; it being a part of lots one and two, in block No. fifty, in Bigelow and Underhill's addition to Peoria." The court also find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess the plaintiff's damages at the sum of one cent. It is thereupon considered and adjudged by the court

6 Personally served on William Kellogg, the defendant in this suit, who is the actual occupant of the premises for which this action is brought, with a true copy of the declaration hereto annexed, and also a true copy of the notice in writing to the said declaration subjoined and likewise annexed.

Peoria, November the 18th, A. D. 1854.

HARRY WILTON,
U. S. Marshal, District of Illinois.
By M. R. OWEN, *Dept. Marshal.*

Indorsed: Filed Dec. 22, 1854.

WM. POPE, *Clk.*

On this day, to wit, the 23d day of December, in the December term, A. D. 1854, of said court for said district of Illinois, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

This day came the plaintiff, by his attorneys, and filed his declaration in ejectment herein, together with the notice in writing thereto attached, and upon reading and filing an affidavit of a due service of a true copy of said declaration and notice upon said defendant,
7 it is ordered, on motion of said plaintiff, by his said attorneys, that defendant plead thereto in twenty days or that his default be entered.

On this day, to wit, the 10th day of July, A. D. 1855, came said defendant, by his attorney, and filed in the office of the clerk of said court for the northern district of Illinois his plea in said entitled cause; which said plea is in words and figures following, to wit:

In the circuit court of the northern district of Illinois, July term, 1855, in ejectment.

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. }

Said defendant comes and defends, &c., and says he is not guilty of the trespass and ejectment in said declaration charged against him in manner and form as the same is therein and thereby set forth and alleged, and of this he puts himself upon the country, &c.

C. BALLANCE.

Indorsed: Filed July 10th, 1855.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the tenth day of July, in the July term,
8 A. D. 1855, of said court for the northern district of Illinois, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

Now at this day come the parties, by their attorneys, and upon issue joined by agreement of the parties, by their attorneys, they waive the intervention of a jury and for trial put themselves upon the court, and after proceeding with the trial of the cause until the hour of adjournment, the further trial of the cause is postponed until to-morrow morning.

On the next day, to wit, the eleventh day of July, in said July term, A. D. 1855, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

Now at this day come again the parties, by their attorneys, and after hearing the remainder of the evidence and the arguments of counsel, the court not being now sufficiently advised upon the issue submitted herein, take time to consider.

9 On the next day, to wit, the 12th day of July, in the July term, A. D. 1855, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

The court having now fully considered and being now fully advised upon the issue heretofore submitted in this cause, find the defendant guilty of unlawfully withholding from the possession of the plaintiff, the land and premises described in the plaintiff's declaration, to wit, "a part of a claim numbered seven, in the village (now city) of Peoria, county of Peoria, and State of Illinois, as confirmed to Thomas Forsyth by an act of Congress approved March 3d, A. D. 1823, entitled 'An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois,' commencing at the most easterly point or corner of said claim or lot No. seven, at the point where First street and the cross-street B intersect each other; thence along First street and the southeasterly line of said claim eighty-two feet; thence at right angles with First street and parallel with the cross-street B one hundred and one feet, to Water street, as laid off in Bigelow and Underhill's addition to Peoria; thence along the
10 lower or southeasterly edge of Water street, seventy-eight feet, to cross-street B; thence along said cross-street B, ninety-two feet, to the place of beginning; it being a part of lots one and two, in block No. fifty, in Bigelow and Underhill's addition to Peoria." The court also find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess the plaintiff's damages at the sum of one cent. It is thereupon considered and adjudged by the court

that the plaintiff have and recover against the defendant the possession of the above-described land and premises, according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and also that he have and recover of the defendant his said damages of one cent as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

On this day, to wit, the second day of February, A. D. 1856, came said defendant, by his attorney, and filed in said clerk's office his motion for a new trial in said entitled cause, which said motion is in the words and figures following, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } In ejectment.

11 Defendant moves the court to set aside the verdict herein, and grant a new trial, for the reason that the trial was had without the intervention of a jury, and on that account the Supreme it is presumed, will not review the case.

C. BALLANCE, *for Def't.*

Indorsed: Filed Feb'y 2d, 1856.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 12th day of February, A. D. 1856, in the December term, A. D. 1855, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

The court sustains the motion of the defendant heretofore made herein by his attorney for a new trial of this cause, upon the payment by the defendant of the costs of the cause, and it is continued to the next term.

On this day, to wit, the 24th day of July, in the July term, A. D. 1856, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

12 ROBERT FORSYTH
vs.
WILLIAM KELLOGG. } Ejectment.

Now, at this day, come the parties, by their attorneys, and upon issue joined thereupon, come a jury of good and lawful men, to wit: H. M. Boggess, Samuel Dimon, M. Taggart, Elisha Putnam, David J. Mixer, Rufus Ordway, William McKee, Thomas Barnett, Peter Stout, Daniel P. Holt, D. Johnson, and John Brown, who were duly elected, tried, and sworn, and after hearing the evidence and receiving instructions from the court, the jury returned the following verdict, to wit: We, the jury, find the defendant guilty of unlawfully

withholding from the possession of the plaintiff the land and premises described in his declaration, being those certain premises situated in the county of Peoria, in the State of Illinois, and described as follows, to wit: a part of claim number seven, in the village of Peoria, in the State of Illinois, as confirmed to Thomas Forsyth by an act of Congress approved March 3d, A. D. 1823, entitled "An act to confirm certain claims in the village of Peoria, in the State of Illinois, commencing at the most easterly point or corner of said claim or lot number seven, at the point where First street and the cross-street B intersect each other; thence along First street and the southeasterly line of said claim eighty-two feet; thence at right angles with
13 First street and parallel with the cross-street B one hundred and one feet, to Water street, as laid off in Bigelow and Underhill's addition to Peoria; thence along the lower or southeasterly side of Water street, seventy-eight feet, to cross-street B; thence along said cross-street B ninety-two feet, to place of beginning; it being a part of lots one and two, in block number fifty, in Bigelow and Underhill's addition to Peoria. We also find the estate established in the plaintiff to be an estate in fee simple, and we assess the damages of the plaintiff at the sum of one cent.

It is thereupon ordered and adjudged by the court that the plaintiff have and recover of and from the said defendant possession of the said described land and premises, according to the form, force, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the said defendant the sum of one cent, his damages as aforesaid assessed, together with his costs by him about his suit in this behalf expended, amounting to the sum of dollars and cents, and that he have execution therefor.

14 On this day, to wit, the fourteenth day of May, in the adjourned May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
HENRY M. KELLOGG, URIEL A. KELLOGG, John G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker, his wife. } Ejectment.

The defendants, by their attorney, come and file the mandate of the Supreme Court of the United States reversing the judgment of this court in this behalf, it is thereupon ordered by the court that said cause be docketed.

On this day, to wit, the 19th day of May, in the adjourned May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
v.
HENRY M. KELLOGG, URIEL A. KELLOGG, John G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker. } Ejectment.

15 This cause having this day been called up by the defendants, and on motion of C. Ballance, esq., their attorney, the said plaintiff and his attorney being now three times solemnly called comes not, but makes default, and thereupon this cause is dismissed at the plaintiff's costs for failing to prosecute the same. It is thereupon considered and adjudged by the court that the defendants do have and recover of the plaintiff the costs and charges herein by them expended, and that they have execution therefor; and it is further ordered, on motion, that a writ of restitution issue herein.

On this day, to wit, the 26th day of May, in the adjourned May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker. } Ejectment.

16 The order heretofore made in this cause, so far as it awards a writ of restitution, is vacated and set aside, with leave to the defendants to move for such writ.

On this day, to wit, the eleventh day of June, in the adjourned May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
v.
HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker. } Ejectment.

Now come the defendants, by Charles Ballance, esq., their attorney, and moves the court that a writ of restitution issue herein, and the court being fully advised therein, sustains said motion, and awards a writ of restitution.

On this day, to wit, the 13th day of June, in the adjourned May term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

17 ROBERT FORSYTH
v.
HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker. } Ejectment.

Now comes the plaintiff, by W. C. Gondy, his attorney, and on motion and affidavit heretofore filed the order heretofore entered on the nineteenth day of May last dismissing this cause, is vacated and set aside, the plaintiff having paid the costs of the Supreme Court, and of this court except the docket fee as directed by the court, but this order is not to affect the writ of restitution issued herein.

On this day, to wit, the 17th day of July, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
v.
HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker.

18 Now comes the plaintiff by W. C. Gondy, esq., his attorney, and moves the court for a writ of restitution for a part of the real estate and premises herein.

On this day, to wit, the 24th day of July, in the July term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
v.
HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker. } Ejectment.

The motion of the plaintiff's attorney for a writ of restitution is postponed until the October term of this court, upon the filing of a bond by Mr. Ballance, which is accordingly done.

On this day, to wit, the 12th day of October in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit.

19	ROBERT FORSYTH *v.* HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker.	Ejectment.

Now comes on to be heard the motion of the plaintiff by his attorney for a writ of restitution, which, after argument, is taken under advisement by the court.

On this day, to wit, the 28th day of October, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

	ROBERT FORSYTH *v.* HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker.	Ejectment.

Now come the parties, by their attorneys, and the court having considered and being fully advised, on the motion heretofore submitted by the plaintiff for a writ of restitution, sustains the same as to
20 that portion of lot or claim number seven (7) in the village of Peoria confirmed to Thomas Forsyth by the act of Congress entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," approved March 3d, 1823, bounded as follows: beginning at a point in the southeasterly line of said lot number seven (7) from which the most easterly corner of said lot runs north 43½° east sixty-six feet; thence south 43½° west twenty-two feet; thence north 42½° west to Water street as laid out by Bigelow and Underhill in their addition to Peoria; thence along said Water street twenty-two feet, and thence south 42½° west to the place of beginning, and being the northeast twenty-two feet of lot two, block fifty, in said Bigelow and Underhill's addition to Peoria; and it is ordered by the court that a writ of restitution issue therefor.

On this day, to wit, the 4th day of November, in the adjourned October term, A. D. 1863, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

	ROBERT FORSYTH *v.* HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, 21 Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker.	Ejectment.

Now comes the plaintiff, by his attorney, and on motion, leave is given to amend the declaration.

On this day, to wit, the 5th day of November, A. D. 1863, came said plaintiff, by his attorneys, and filed in said clerk's office his amended declaration, which said amended declaration is in the words and figures following, to wit:

Circuit court of the United States for the seventh circuit court and northern district of Illinois, of the October term, A. D. 1863.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Robert Forsythe, citizen of the State of Missouri, by leave, &c., amends, and complains of Henry M. Kellogg, Uriel H. Kellogg, John G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker, his wife, heirs-at-law of William Kellogg, the original defendant, now deceased, citizens of the State of Illinois, in a plea of trespass and ejectment. For that whereas the said plaintiff on the first day of November, A. D. one thousand eight hundred and fifty-four,
22 in said northern district of Illinois, was possessed of certain tract or parcel of land, with the appurtenances, situate in the county of Peoria, in the State and northern district of Illinois, and described as follows, to wit: a part of claim numbered seven, in the village of Peoria, in the State of Illinois, as confirmed to Thomas Forsythe by an act of Congress approved March 3d, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," commencing at the most easterly corner of said claim or lot No. 7, at the point where First street and cross-street B intersect; thence along First street and the southeasterly line sixty-six feet; thence at right angles with First street to Water street, as laid off in Bigelow & Underhill's addition to Peoria; thence along the southeasterly line of Water street to cross-street B, and thence along crossstreet B to the place of beginning, it being lot one in block fifty in Bigelow & Underhill's addition to Peoria; which said tract of land exceeds in value the sum of five hundred dollars, and which said premises the plaintiff claims in fee. And he, the said plaintiff, Robert Forsythe, being so possessed thereof, the said defendant, William Kellogg, in his lifetime, afterwards, to wit, on the same day and year last aforesaid, entered the said premises and ejected the said
23 plaintiff therefrom, and from the time last aforesaid has until his death unlawfully withheld, and the said Henry M. Kellogg and others, his heirs, doth now unlawfully withhold from the said plaintiff the possession thereof, to the damage of the said plaintiff of the sum of five hundred dollars; and therefore he brings suit, &c.

BROWNING & BUSHNELL,
Attorneys for Plaintiff.

Indorsed: Filed Nov. 5th, 1863.

WM. H. BRADLEY, *Clk.*

On this day, to wit, the 21st day of May, in the adjourned May term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTHE
v.
HENRY M. KELLOGG, URIAL A. KELLOGG, JOHN G. Kellogg, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker. } Ejectment.

Now come the parties, by their attorneys, and *and* thereupon the death of Henry M. Kellogg, one of the defendants herein is suggested to the court.

24 On this day, to wit, the 21st day of May, A. D. 1864, came the said plaintiff, by his attorney, and filed in said clerk's office his stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

United States circuit court, northern district of Illinois, May term, A. D. 1864.

ROBERT FORSYTHE
vs.
HENRY M. KELLOGG *et al.* } Ejectment.

It is stipulated that the plaintiff claims only the property claimed in the amended declaration herein, on the next trial and hereafter, until leave may be given by the court to amend further, so as to vary the description in the declaration.

May 21, 1864.

W. C. GONDY, *Pl'ffs Att'y.*

Indorsed: Filed May 21st, 1864.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 12th day of July, in the July term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

25 ROBERT FORSYTH
vs.
URIEL H. KELLOGG, JOHN G. KELLOGG, Orchard G. Kellogg, MaryE. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker, survivors of Henry M. Kellogg, dec'd. } Ejectment.

The death of the defendant Henry M. Kellogg having been heretofore entered of record, by agreement of the parties, by their attorneys, Charles Ballance is substituted as co-defendant for the heirs of said Henry M. Kellogg herein. And now come the parties by their attorneys, and upon issue joined thereupon, come a jury of good and lawful men, to wit: Willard P. Flagg, L. K. Osborn, William L. Felton, Samuel Gumaer, D. A. Holmes, Jacob Holt, E. A. Bennett, Willard Wood, Charles W. Murtfeldt, A. P. Wurts, John E. Whiting, and Thomas McNulty, who were all duly elected, tried, and sworn to well and truly try said issue, and after hearing a part of the evidence, the

hour of adjournment having arrived, the further trial of this cause is postponed until to-morrow evening.

26 On this day, to wit, the 13th day of July, in the July term, A. D. 1864, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH
vs.
URIEL H. KELLOGG, JOHN G. KELLOGG, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, Mary C. Parker, and Charles Ballance. } Ejectment.

Now come again the parties, by their attorneys, and come also the jury in this behalf empanelled and sworn, and after hearing additional evidence, it is ordered by the court, on motion of the defendants by their attorney, and with the consent of the plaintiff's counsel, that a juror be withdrawn, and the panel discharged from the further consideration of this cause, and that the same be continued to the next term of this court.

On this day, to wit, the 28th day of March, in the adjourned March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

27 ROBERT FORSYTH
vs.
URIEL H. KELLOGG, JOHN G. KELLOGG, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, Mary C. Parker, and Charles Ballance. } Ejectment.

Now come the parties, by their attorneys, and upon issue joined thereupon, come a jury of good and lawful men, to wit: John M. Guill, Charles W. McClallan, John Bates, Timothy Cochrane, William Coleman, Frederick Coe, David B. Sears, Hiram J. Molter, Alexander Shaw, Orlow Rollins, James B. McCoy, and Augustus Banyon, who were all duly elected, tried, and sworn to well and truly try said issue, and after hearing the evidence, the hour of adjournment having arrived, the arguments of counsel are postponed until to-morrow morning.

On the next day, to wit, the 29th day of March, in the adjourned March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

28 ROBERT FORSYTH
vs.
URIEL H. KELLOGG, JOHN G. KELLOGG, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, and Mary C. Parker, his wife, heirs-at-law of William Kellogg, and Charles Ballance. } Ejectment.

Now come again the parties, by their attorneys, and come also the

jury in this behalf empanelled and sworn, and after hearing the arguments of counsel, and receiving the instructions of the court, the jury retire to consider of their verdict, and after a short absence, the jury return into court the following verdict, to wit: We, the jury, find the defendants guilty of unlawfully withholding from the possession of the plaintiff the real estate and premises described in the plaintiff's declaration, as follows, to wit: a certain tract or parcel of land, with the appurtenances, situate in the county of Peoria, in the State and northern district of Illinois, and described as follows, to wit, a part of claim numbered seven, in the village of Peoria, in the State of Illinois, as confirmed to Thomas Forsyth by an act of Congress approved March 3d, eighteen hundred and twenty-three, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," commencing at the most easterly
29 corner of said claim or lot No. seven, at the point where First street and cross-street B intersect; thence along First street and the southeasterly line sixty-six feet; thence at right angles with First street to Water street, as laid off in Bigelow & Underhill's addition to Peoria; thence along the southeasterly line of Water street to cross-street B, and thence along cross-street B to the place of beginning, it being lot one in block fifty in Bigelow & Underhill's addition to Peoria. We also find the estate established in the plaintiff on the trial to be an estate in fee simple, and assess his damages to the sum of one cent; and thereupon the defendants, by their attorney, move the court for a new trial herein.

On this day, to wit, the 19th day of April, in the adjourned March term, A. D. 1865, of said court, in the record of the proceedings thereof in said entitled cause is the following entry, to wit:

ROBERT FORSYTH *vs.* URIEL H. KELLOGG, JOHN G. KELLOGG, Orchard G. Kellogg, Mary E. Kellogg, Caroline Kellogg, Margaret N. Kellogg, Timothy Parker, Mary C. Parker, his wife, heirs-at-law of William Kellogg, dec'd, and Charles Ballance.	Ejectment.

30 The court having considered, and being now fully advised upon the motion of the defendants heretofore entered by their attorney for a new trial of this cause, overrules said motion, it is thereupon considered and adjudged by the court that the said plaintiff do have and recover of and from the said defendants possession of the real estate and premises aforesaid described according to the force, form, and effect of his said recovery, and that he have a writ of possession therefor, and that he also have and recover of the said defendants the said sum of one cent, his damages so as aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, amounting to the sum of fifty-one dollars and ninety-five cents, and that he have execution therefore.

31 On the trial of said cause, the following exceptions were made and allowed, and are in the words and figures following, to wit:

ROBERT FORSYTH
vs.
URIAL H. KELLOGG *et al.* } In ejectment.

Be it remembered, that on the trial of this case, the plaintiff to maintain the issue in his part, read to the jury—

1. A patent to the legal representatives of Thomas Forsyth, which is as follows:

The United States of America to all to whom these presents shall come, greeting:

Whereas there has been deposited in the General Land Office a certificate numbered sixteen of the register and receiver of the land office at Edwardsville, Illinois, whereby it appears that in the report dated 10th November, 1820, of Edward Coe, register of the land office at Edwardsville, Illinois, the claim of Thomas Forsyth under John Baptist Maillet, and in right of his own occupancy and cultivation, is entered as number seven. And whereas it further appears from
32 the certificate aforesaid that the said John Baptist Maillet is the inhabitant or settler within the purview of the confirmatory act of Congress approved 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," and that it has appeared to the satisfaction of the said register and receiver that the said inhabitant or settler did not, prior to the said act of 3d March, 1823, receive a "confirmation of claims or donation of any tract of land or village lot from the United States," and that the legal representatives of the said Thomas Forsyth, under said Maillet, in virtue of the confirmatory act aforesaid, are entitled to a patent for a certain lot described as follows, to wit: The lot containing one hundred and two thousand nine hundred and thirty-three square feet and ninety-three hundredth of a square foot, surveyed and designated as covered by said claim number seven, excluding therefrom the tract or portion of said lot containing twenty-seven thousand four hundred and forty-nine square feet and seven
33 hundreths of a square foot, covered by claim number fourteen of Jacques Mette, also under said Maillet, said claim number seven being situated in the southeast fractional quarter of fractional section nine, in township eight, north of range eight, east of the fourth principal meridian, Illinois, according to the survey approved 1st September, 1840, by the surveyor of the public lands in the States of Illinois and Missouri. And whereas, in the confirmatory act aforesaid of the 3d March, 1823, it is provided "that nothing in this act contained shall be so construed as to affect the right, if any such there be, of any other person or persons to the said lots, or any part of them, derived from the United States, or any other source whatever," &c.:

Now, know ye, that in consideration of the premises, and pursuant to the second section of the act aforesaid, of the 3d March, 1823, there is granted by the United States to the legal representatives of

the said Thomas Forsyth, and to their heirs, subject to the proviso aforesaid, the lot of land above described as covered by the said claim number seven, but expressly excluding therefrom the portion of the said lot covered by claim number fourteen aforesaid:

34 To have and to hold the said lot of land, with the appurtenances, unto the said legal representatives of Thomas Forsyth, and to their heirs and assigns forever, subject to the proviso and exclusion aforesaid.

In testimony whereof, I, James K. Polk, President of the United States, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the sixteenth day of December, in the year of our Lord one thousand eight hundred and forty-five, and of the independence of the United States the seventieth.

By the President: JAMES K. POLK,
By J. KNOX WALKER, *Sec'y.*

S. H. LAUGHLIN, *Recorder of the General Land Office.*

Recorded vol. 10, pages 97 and 98.

35 2. General plat of the French village of Peoria, which is as follows, to wit:

Plat of the new village of Peoria, and of such of the out lots and field lots in the neighborhood thereof as are connected with said new village, in one continuous survey, and description of the out boundaries of the said town and continued connexion of out lots and field lots situate in sections 9 and 16, township 8 north of the base line, range 8 east of the 4th principal meridian.

(Here follows map, marked page 35.)

36 *Description.*—Begin at the upper end of the southeastern edge of First street on the northwest bank of lake Peoria; thence N. 46½ deg. W. one hundred feet, to the eastern corner of unclaimed lot A, 420 feet 10 inches, the north corner of said unclaimed lot A, at the northeast end of the SE. edge of Second street, 486 feet 10 inches to the NE. end of the NW. edge of Second street; thence S. 43½ W., with the NW. edge of Second street, 256 feet 8 inches, to the intersection with the NE. edge of street A; thence N. 46½ W, with the NE. edge of street A, 320 feet 10 inches, to the NW. end of the NE. edge of said street A; thence S. 43½ W. 66 feet—the north corner of lot No. 66, at the NW. end of the SW. edge of said street A, 108 feet 9⅓ inches, the next corner of lot No. 66, and north corner of unclaimed lot C—322 feet 8 inches; the west corner of unclaimed lot C, and the north corner of lot No. 12, 408 feet 2⅔ inches; the west corner of lot No. 12, and the NW. end of the NE. edge of street B, 474 feet 2⅔ inches; the NW. end of the SW. edge of street B, and the north corner of lot No. 8, 709 feet 6 inches; the north corner of lot No. 15, 795 feet and ⅔ of one inch, to the west corner of lot No. 8, which is also the west corner of lot No. 15, and east corner of lot No. 61, and north corner of lot No. 28;

37 thence N. 46½ W., with the NE. boundary of lot No. 61, 15

chains and 40 links, to the north corner of lot No. 61; thence, with the NW. boundary of lot No. 61, S. 43½ W., 5 chains and 52½ links, to the west corner of lot No. 61; thence, with the SW. boundary of lot No. 61, S. 46½ E., 4 chains and 94 links, to the north corner of lot No. 51, at the intersection of the NW. boundary thereof, with the SW. boundary of lot No. 61; thence, with the NW. boundary of lot No. 51, S. 43½ W., 4 chains and 88 links, to the west corner of lot No. 51; thence, with the southwest boundary of lot No. 51, S. 46½ E., 6 chains and 10 links, to the north corner of lot No. 40, at the intersection of NW. boundary thereof with the SW. boundary of lot No. 51; thence, with the NW. boundary of lot No. 40, S. 43½ W., 3 chains and 23⅓ links, to the west corner of lot No. 40; thence, with the SW. boundary of lot No. 40. S. 46½ E., 4 chains and 34 links, to the NW. end of the NE. edge of street E, on the SW. boundary of lot No. 40; thence S. 43½ W., 66 feet, to the NW. end of the SW. edge of street E, and the north corner of unclaimed lot E, 322 feet 8 inches, to the east corner of lot No. 31, at the intersection of the NE. boundary thereof with NW. boundary of unclaimed lot E; thence, with the NE. boundary of lot No. 31, N. 46½ W., 13 chains and 16 links, to the north corner of lot
38 No. 31; thence, with the NW. boundary of let No. 31, S. 43½ W., 3 chains and 88 links, to the west corner of lot No. 31, at the intersection of the NW. boundary thereof, with the NE. boundary of lot No. 37; thence, with the NE. boundary of lot No. 37, N. 46½ W., 5 chains and 5½ links, to the north corner of lot No. 37; thence, with the NW. boundary of lot No. 37, S. 43½ W., 7 chains and 66 links, to the west corner of lot No. 37; thence, with the SW. boundary of lot No. 37, S. 46½ E., 6 chains and 67½ links, to the north corner of lot No. 67, ut the intersection of the NW. boundary thereof, with the SW. boundary of lot No. 37; thence, with the NW. boundary of lot No. 67, S. 43½ W., 6 chains to the west corner of lot No. 67; thence with the SW. boundary of lot No. 67, S. 46½ E., 6 chains and 38 links, to the south corner of lot No. 67, on the NW. boundary of lot No. 64; thence S. 43½ W., 1 chain and 66 links, the west corner of lot No. 64, and with corner of lot No. 20, 7 chains and 61 links, the west corner of lot No. 20 and north corner of lot No. 48, 11 chains and 86 links, to the west corner of lot No. 48; thence, with the SW. boundary of lot No. 48, S. 46½ E., 6 chains and 88 links, the point of intersection of the SW. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian,
39 which point is 13 chains and 93 links N. 89½ deg. W. of the corner to fractional sections 9 and 16 on the lake; 8 chains to the south corner of lot No. 48; thence with the SE. boundary of lot No. 48 N., 43½ E., 1 chain and 6 links, the point of intersection of the SE. boundary of lot No. 48 with the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 12 chains and 38 links N. 89½ deg. W. of the corner to fractional sections 9 and 16 on the lake; 4 chains and 25 links to the east corner of lot No. 48 on the SW. boundary of lot

No. 20; thence with the SW. boundary of lot No. 20 S. 46½ deg. E., 2 chains, to the south corner of lot No. 20; thence N. 43½ deg. E., 5 chains and 95 links, the east corner of lot No. 20 and south corner of lot No. 64; 13 chains and 61 links the east corner of lot No. 64 and south corner of lot No. 43; 21 chains and 27 links to the east corner of lot No. 43 and south corner of lot No. 34, at the SW. end of the NW. edge of Second street; thence S. 46½ deg. E., 66 feet, the SW. end of the SE. edge of Second street and west corner of lot No. 33; 386 feet 10 inches the south corner of lot No. 33; 491 feet 1½ inches to the lower end of the SE. edge of First street, on the NW. bank of lake Peoria; thence along the NW. bank of lake Peoria the following courses and distances: N. 83 E., 176 links; thence N. 42 deg. E., 432 links; thence N. 77¾ deg. E., 150 links; thence N. 78 deg. E., 72 links; thence N. 47½ deg. E., 417 links; 40 thence N. 37 deg. E., 188 links; thence N. 44¾ deg. E., 2,448 links, to the place of beginning. Then for connexion with the public surveys run from the said place of beginning along the NW. bank of lake Peoria the following courses and distances: N. 44¾ deg. E., 1,081 links; thence N. 50¾ deg. E., 1,300 links, to the point of intersection of the section line between sections 9 and 10 with the NW. bank of lake Peoria, which point is 2,406 links S., 0 deg. 30 min. W. of the corner to sections 3, 4, 9, and 10, township 8 north, range 8 east of the 4th principal meridian. Also, from the lower end of the SE. edge of First street, the following courses and distances along the bank of the lake were taken for connexion: S. 51¾ deg. W., 198 links; thence S. 39 deg. W., 819 links; thence S. 41¼ deg. W., 216 links; thence S. 49½ deg. W., 287 links; thence S. 85 deg. W., 116 links, to the point of intersection of the section line between sections 9 and 16, township 8 north, range 8 east of the 4th principal meridian, which point is 2,510 links S. 89 deg. 30 min. E. of the corner to section 8, 9, 16, and 17 of said township.

Surveyed on the several days designated in the foregoing separate descriptions of the lots by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of the public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

41 Examined and approved this first of September, 1840.

WILLIAM MILBURN,
Surveyor of the Public Lands in the States of Illinois and Missouri.

SURVEYOR'S OFFICE, *St. Louis, 24th January*, 1842.

The foregoing plat and description of the plat of the new village of Peoria, in Illinois, is correctly copied from the plat and description thereof in the "Record of Surveys" in Peoria, Illinois, of this office.

JOS. C. BROWN,
Surveyor of the Public Lands for the District of M. and Ills.

3. The separate plat of lot 7, which is as follows:

Claim No. 7, situate in the southeast fractional quarter of fractional section 9 in fractional township 8 north of the base line, range 8 east of the 4th principal meridian.

Plat and description of the survey of a lot in the new village of Peoria, in the State of Illinois, confirmed to Thomas Forsyth by an act of Congress approved the 3d of March, 1823, entitled "An
42 act to confirm certain claims to lots in the village of Peoria, in the State of Illinois," it being No. 7 of the report made by the register of the land office at Edwardsville, in pursuance of an act of Congress approved the 15th of May, 1820, entitled "An act for the relief of the inhabitants of the village of Peoria, in the State of Illinois."

(For plat, see original.)

Description.—Commence at a post at the intersection of the SW. edge of the cross-street B with the NW. edge of First street, which post is the east corner of this lot; thence with the NW. edge of First street, S 43½ deg. W., 40 feet, a post and stone set by it; 235
43 feet 3 inches and ⅓ of an inch to a post the east corner of the survey of claim No. 14; 320 feet 10 inches the south corner of this lot and of the survey of claim No. 14 and the east corner of lot No. 2; thence N. 46½ deg. W., 320 feet 10 inches to a post in the SE. edge of Second street, the west corner of this lot, and of the survey of claim No. 14, and north corner of lot No. 2; thence with the SE. edge of Second street, N. 43½ deg. E. (85 feet 6 inches and ⅔ of an inch to a post the north corner of the survey of claim No. 14.) 320 feet 10 inches to a post at the intersection of the SE. edge of Second street with the SW. edge of the cross-street B, which point is the north corner of this lot; thence with the SE. edge of the cross-street B, S. 46½ deg. E., 320 feet 10 inches, to the place of beginning.

This lot, as surveyed and here described, contains 102,933 square feet and $\frac{93}{100}$ of a square foot, and includes the survey of the claim No. 14, confirmed to Jacques Mette, as represented in the plat.

Surveyed on the 29th of April, 1837, by Joseph C. Brown, deputy surveyor, under instructions from Daniel Dunklin, surveyor of public lands in the States of Illinois and Missouri, bearing date the 11th of April, 1837.

44 Examined and approved this first day of September, 1840.

(Signed) WILLIAM MILBURN,

Surveyor of the Public Lands in the States of Illinois and Missouri.

OFFICE OF THE SURVEYOR GENERAL FOR ILLINOIS AND MISSOURI,
St. Louis, 19th September, 1854.

I, John Loughborough, surveyor general for Illinois and Missouri, do hereby certify that the foregoing is correctly copied from page 7 of the book of records of surveys in Peoria, Illinois, in this office.

JNO. LOUGHBOROUGH, *Surveyor General.*

45 4. Deposition of Joseph Le Papin, which is as follows, to wit:

Deposition of Joseph Le Papin, taken at St. Louis, Missouri, on the 13th day of July, A. D. 1863, before Joel S. Harper, esq., notary public, on behalf of the plaintiff.

The said deponent, being first carefully examined and cautioned and sworn to testify the whole truth, doth depose and say:

My name is Joseph L. Papin; I am forty-two years old, and was born in the city of St. Louis, and have resided all my life in said city; my occupation is that of a real estate agent; I am acquainted with Robert Forsythe, the plaintiff in this case; I know none of the defendants; I knew Thomas Forsythe; he was married; I also knew his wife; they are both dead; Thomas Forsyth died in the year 1833; his wife died before him, about the year 1829 or 1830; Thomas Forsyth, at the time of his death, left three children, Robert Forsyth, Thomas Forsyth, and Mary Forsyth, who afterwards married Anthony R. Bouis. Mary Bouis died in 1838, without issue; Anthony R. Bouis died one year ago or more; Thomas Forsyth died about eighteen months ago. The city of Peoria, Illinois, is
46 more than one hundred miles from St. Louis, Missouri. Chicago, in the State of Illinois, is upward of two hundred miles from the city of St. Louis, Missouri. Thomas Forsyth, sr., died in the city of St. Louis, Thomas Forsyth, jr., died in Franklin county, Missouri; Mary Bouis died at the house of Robert Forsyth, in St. Louis county; A. R. Bouis died in the city of Carondelet, in St. Louis county.

JOSEPH L. PAPIN.

5. A deed from Antoine R. Bouis to Hypolite Papin, which is as follows:

This deed, made this tenth day of March, in the year eighteen hundred and thirty-eight, by and between Anthony R. Bouis, of the first part, Hypolite Papin, of the second part, and Mary Bouis, party of the third part, witnesseth: That the said party of the first part, for and in consideration of the sum of twenty dollars to him in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, doth by these presents grant, sell, alien, assign, transfer, and set over unto the said party of the second part, all his right, title, interest, estate, claim, and demand of, in, and to all real estate, wherever situated, which came to him in right
47 of his wife, Mary Bouis, late Mary Forsyth, particularly two lots of ground in the town of Peoria, State of Illinois, which said lots were owned by Thomas Forsyth, late father of said Mary, and by his last will and testament devised to said Mary, and also a lot of ground in the city of St. Louis, State of Missouri, lying in block No. twenty-seven of said city, on Second street, at the corner of Prince street, being the land devised by the last will and testament of Thomas Forsyth, deceased, to his son Thomas Forsyth, in which said last described lot the said A. R. Bouis and wife may by possibility have an interest; also all right, title, and interest which

the said Anthony R. Bouis now has, or hereafter by possibility may have, in the estate of Thomas Forsyth, deceased, by and through his wife Mary; to have and to hold the hereby granted premises, unto the party of the second part, and to his heirs and assigns forever. In trust, however, to and for the sole and separate benefit, behoof, use, maintenance, and support of the said Mary Bouis and her heirs forever, to be by said Papin held subject to the orders and directions of the said Mary Bouis and her heirs, and the same to rent, mortgage, sell, or otherwise dispose of, according to the orders and
48 directions of the said Mary and her heirs, said orders and directions at all times to be in writing. And the said party of the second part thereby covenants faithfully to perform and fulfil this trust.

In witness whereof, the said parties have hereunto set their hands and seals the day and year first above written.

A. R. BOUIS. [SEAL.]
HY'LE PAPIN. [SEAL.]

Done in presence of—the word "Mary," in the first page, interlined before execution—

CAAS. D. DRAKE.

STATE OF MISSOURI, *County of St Louis, ss:*

Be it remembered that on this tenth day of March, in the year of our Lord one thousand eight hundred and thirty-eight, before me, Henry Chouteau, clerk of the county court, within and for the county aforesaid, personally appeared *before me* Anthony R. Bouis and Hypolite Papin, both of whom are personally known to me to be the persons whose names are subscribed to the foregoing instrument of writing as parties thereto, and severally acknowledged the same to their act and deed for the purposes therein mentioned.

In testimony whereof, I have hereunto set my hand and
49 affixed the seal of said court, at office, in the city of Saint Louis, in the county and State aforesaid, the day and year above written.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

Filed for record March 12th, 1838.

Recorded March 21st, 1838.

J. W. RULAND, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, John Ruland, clerk of the circuit court and ex officio recorder within and for the county aforesaid, certify that the foregoing is a true and correct copy of the record as the same now remains in my office.

Given under my hand and seal of office, at the city of St. Louis, this twenty-second day of August, eighteen hundred and thirty-eight.

[SEAL.] JNO. RULAND, *Recorder.*

6. Deed from said Papin to Charles D. Drake, trustee, together with the authority thereon indorsed, which are as follows:

SAINT LOUIS, *May 19th*, 1838.

To Mr. Hyppolite Papin:

By deed bearing date the tenth day of March, 1838, now of
50 record in the recorder's office of Saint Louis county, Anthony R. Bouis, my husband, granted, conveyed, assigned, and transferred to you, Hyppolite Papin, all the right, title, estate, and interest, which the said Anthony R. Bouis had, or might thereafter have, in the estate of Thomas Forsyth, deceased, in consequence of his intermarriage with the undersigned, which will more fully appear by said deed, to which reference is made. To be held, however, by you in trust for my sole use and benefit; to be held subject to my orders and directions; to be sold or otherwise disposed of according to my orders and directions, "to be in writing."

Now I do hereby request and direct you, by these presents, to convey, assign, transfer, and set over to Charles D. Drake, all the right, title, and claim conveyed by said deed to you in the estate in said deed mentioned, except a lot of ground in said deed mentioned lying in the city of Saint Louis, in block No. 27, on Second street, at the corner of Prince street, being the same devised by Thomas Forsythe, dec'd, to his son Thomas Forsythe, "to be held, however, by said Drake in trust for my sole benefit, and to be subject to my control and directions.

In testimony whereof, I have hereunto set my hand and seal
51 this 19th day of May, 1838.

MARY BOUIS. [L. S.]

Witness: THOMAS L. DISHAROON.

This deed, made and entered into this nineteenth day of May, in the year eighteen hundred and thirty-eight, between Hyppolite Papin of the first part, and Charles D. Drake of the second part, witnesseth: That whereas, on the tenth day of May, in the year 1838, Anthonis R. Bouis, of the city of Saint Louis, transferred, assigned, set over, and conveyed by his deed, commonly called deed of trust, of that date, all the right, title, claim, and interest which the said Anthony R. Bouis had or might have, in right of his wife, to the real estate as well as the personal estate of Thomas Forsythe, deceased, the father of Mary Bouis, the wife of said Anthony, to be held by the abovenamed Papin for the sole use and benefit of the said Mary Bouis, and to be controlled and disposed of according to the directions of said Mary Bouis; and whereas the said Mary did, by her certain instrument in writing, signed and sealed by her, bearing even date herewith and making part and parcel hereof, (see first
52 page,) direct the undersigned, Hyppolite Papin, to transfer, convey, assign, and set over to the abovenamed Drake all the estate held by the said Papin under said deed of trust, except a lot of ground lying in Saint Louis, in block No. 27, on Second street, at the corner of Prince street, to be held by said in trust for the use and benefit of said Mary Bouis:

Now, therefore, in consideration of the premises, and in further consideration of one dollar, to me in hand paid, I do by these presents grant, release, assign, transfer, convey, and set over to the said Charles D. Drake all the interest, claim, or title which I acquired under said deed from Anthony Bouis to me, (to which reference is here made,) in the interest of the said Bouis, in the estate of Thomas Forsythe, deceased, in possession, reversion, or remainder, whether real, personal, or mixed, and also on all the estate claimed or held by said Bouis in right of his said wife, Mary Bouis, late Mary Forsythe. To have and to hold the same to the sole and separate use and behoof of the said Mary Bouis forever, to be held by the said Drake, except as hereinbefore excepted, subject to the orders and directions of the said Mary, and to sell, rent, or dispose of the same according to the di-
53 rections of said Mary, to be in writing. And the said Drake covenants and agrees that he will undertake and faithfully fulfil and perform this trust.

In testimony whereof, we have hereunto set our hands and affixed our seals this nineteenth day of May, 1838.

HY'TE PAPIN. [L. S.]
CHAS. D. DRAKE. [L. S.]

Signed, sealed, &c., in the presence of—the words "except as hereinbefore excepted," between the fourth and fifth lines of this page, interlined before execution, and also the words "making part and parcel hereof." (See first page.)—

M. P. LEDUC.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on this twenty-first day of May, in the year of our Lord one thousand eight hundred and thirty-eight, before me, Mary Philyi Leduc, one of the justices of the county court within and for the county aforesaid, came Hypolite Papin and Charles D. Drake, both personally known to me to be the persons whose names are subscribed to the foregoing instrument in writing as parties to the
54 same, and severally acknowledged said instrument to be their act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

M. P. LEDUC,
Justice, County Court, St. Louis County.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, John Ruland, clerk of the circuit court, and ex officio recorder for the county aforesaid, certify that the foregoing instrument of writing was filed in my office for record on the 22d day of May, 1838, and is truly recorded in book E, No. 2, pages 91, 92.

Given under my hand and the seal of the said court, at office, this 5th day of July, A. D. 1838.

[SEAL.] JNO. RULAND, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Lewis F. Lacey, clerk of the county court for the county aforesaid, certify that Mary P. Leduc, esq., whose name is subscribed to the foregoing certificate of acknowledgment, was on the day of the date thereof a justice of the county court within and for said county duly commissioned and qualified. I further certify that said
55 instrument in writing is executed and acknowledged in due form of law according to the laws of the State of Missouri.

In testimony whereof, I hereunto set my hand and affix the seal of said court, at office in St. Louis, the twenty-ninth day of November, A. D. 1852.

[SEAL.] LEWIS F. LACY, *Clerk.*

7. Deed from said Drake to plaintiff dated Aug. 2, 1838, which is as follows:

Whereas by a certain deed made by Hypolite Papin to Charles D. Drake, dated the twenty-first day of May, eighteen hundred thirty-eight, the said Drake became trustee for Mary Bouis, wife of Anthony R. Bouis, in respect of the property therein conveyed, to wit: a negro slave named Lews, aged about twenty-two or three years; a mulatto slave named Jim, aged about fifteen years; also all the personal property of the said A. R. Bouis, consisting of household and kitchen furniture; and whereas, also, by deed dated the nineteenth day of May, in the year aforesaid, said Papin conveyed to said Drake, in trust for the said Mary, all the interest, claim, and title which he, said Papin, acquired from Anthony R. Bouis by deed dated the
56 tenth of March, in the year aforesaid, in and to the real and personal property belonging to the estate of Thomas Forsyth, deceased, and which the said A. R. Bouis had or might have any claim to in right of his said wife, (except a lot of ground lying in St. Louis, in block number twenty-seven, in Second street, at the corner of Prince street,) which last-mentioned property was conveyed to said Drake for the sole and separate use of Mary Bouis, apart from her said husband, and free from his control; and whereas the said Drake, as trustee aforesaid, under said deeds of Hypolite Papin to him, is bound to obey the directions of Mary Bouis, as to the disposition of said property; and whereas, furthermore, it is the desire of said Mary Bouis that said Drake should convey all said property, and all interest therein, which he took under said two deeds of Papin, unto Robert Forsyth, her brother, in trust for her sole and separate use, free from the control of her husband, and for her heirs forever, to be, however, at all times disposed of, in whole or in part, by sale, mortgage, gift, or conveyance, or lease or otherwise, according to her written directions, and she doth hereby direct the said Drake so to
57 convey the same as is made evident by her signing and sealing these presents: Now, therefore, in consideration of the premises, and of five dollars to him, the said Drake, paid by said Robert Forsyth, of St. Louis county, he, the said Charles D. Drake, doth hereby grant, release, assign, sell, and convey unto the said Forsyth the said two slaves above mentioned, and all the personal property

and effects, lands, lots, and interest in the same of every description whatsoever, and all rights, claims, and privileges which were conveyed to or vested in him by the two deeds above mentioned, or either of them. To have and to hold the same unto him, the said Robert Forsyth, his heirs and assigns forever, in trust for the sole and separate use of the said Mary Bouis, and of her heirs forever, free from all intermeddling or control of her said husband. And the said Robert Forsyth and his heirs or assigns shall convey and dispose of the same or any part thereof according to the written directions of said Mary, at any and all times, it being the intent hereof to constitute the said Robert trustee of all the property and effects which said Drake held in trust for the said Mary, in the manner hereinbefore specified. And the said Robert covenants that he will
58 faithfully discharge his duty as trustee hereunder.

In testimony whereof, the said Drake and Forsyth, parties hereto, have affixed their hands and seals, and the said Mary hath also signed and sealed, as evidencing her request and direction as aforesaid, this twenty-second day of August, eighteen hundred thirty-eight.

MARY BOUIS. [SEAL.]
CHAS. D. DRAKE. [SEAL.]
ROBERT FORSYTH. [SEAL.]

Signed, sealed, and delivered in presence of—
HY'TE PAPIN.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered, that on this twenty-second day of August, eighteen hundred and thirty-eight, before the undersigned, Benjamin F. McKinney, a justice of the peace within and for the county aforesaid, came Mary Bouis, Charles D. Drake, and Robert Forsyth, who are personally well known to me to be the persons whose names are subscribed to the foregoing instrument of writing, as parties thereto, and severally acknowledged the same to be their act and deed for the purposes therein mentioned.

Taken and certified the day and year aforesaid.

BENJ. F. McKINNEY, *Justice.*

59 STATE OF MISSOURI, *County of St Louis, ss:*

I, John Ruland, clerk of the circuit court, and ex officio recorder for the county aforesaid, certify that the foregoing instrument of writing was filed for record in my office, on the 29th day of September, 1838, and is truly recorded in book F, No. 2, pages 178, 179.

Given under my hand and the seal of said court, at office, this 15th day of December, A. D. 1838.

JNO. RULAND, *Recorder.*

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Lewis F. Lacy, clerk of the county court *for the county court* for the county aforesaid, certify that Benjamin F. McKinney, esq., before whom the foregoing acknowledgment was made, was, on the day of

the date thereof, a justice of the peace within and for said county, duly commissioned and qualified, and I further certify that said instrument is executed and acknowledged in due form of law, according to the laws of the State of Missouri.

In testimony whereof, I hereto set my hand and affix the seal of said court, at office in St. Louis, this 29th day of November, A. D. 1852.

[SEAL.] LEWIS F. LACEY, *Clerk.*

60 8. Deed from Thomas Forsyth to Robert Forsyth, which is as follows:

Know all men by these presents that I, Thomas Forsyth, of St. Louis, Missouri, for and in consideration of the sum of six thousand dollars to me in hand paid by Robert Forsyth, of St. Louis county, the receipt of which is hereby acknowledged, do hereby grant, sell, alien, enfeoff, and confirm unto said Robert Forsyth all my right, title, and interest in a negro slave named Lewis, and a mulatto slave name Jim, lately the property of my sister, Mary Bouis, also in all the personal property belonging to her, which slaves and personal property was in her lifetime held in trust for her by said Robert; also all my right and interest in the real and personal property to which my sister was lately in any way entitled as heir of Thomas Forsyth; also all my right, title, and interest in any property, real, personal, or mixed, which belongs to me as heir of my said late sister, wheresoever the same may be, and in particular all my right and estate, being the undivided half, in and to certain lots and real estate at Peoria, in Illinois,

belonging to my said late sister in her lifetime, under and in
61 virtue of the will of the said Thomas Forsyth, deceased, to have and to hold the same unto the said Robert Forsyth, his heirs, executors, administrators, and assigns forever.

In testimony whereof, I have hereunto set my hand and seal this eighteenth day of March, eighteen hundred and thirty-nine.

THOMAS FORSYTH. [SEAL.]

Signed, sealed, and delivered in presence of—
CH'S CABANNE.

STATE OF MISSOURI, *County of St. Louis:*

Be it remembered that on this twenty-eighth day of March, in the year of our Lord one thousand eight hundred and thirty-nine, before me, Mary Philyi Leduc, one of the justices of the county court within and for the county aforesaid, came Charles Cabanne, who is personally well known to me to be the person whose name is subscribed to the foregoing instrument of writing as a subscribing witness, and made oath that Thomas Forsyth, whose name is subscribed to the said instrument of writing as grantor, is the real person who executed the same; that the said Thomas Forsyth subscribed, sealed, and delivered the same in his presence, and acknowledges the same to be his act

62 and deed for the purposes therein mentioned, and that he, the said Charles Cabanne, subscribed the said deed as a witness, in the presence and at the request of the said Thomas Forsyth.

CH'S CABANNE.

Taken and notified the day and year aforesaid.

M. P. LEDUC,
Justice County Court, St. Louis County.

STATE OF MISSOURI, *County of St. Louis, ss:*

I, Henry Chouteau, clerk of the county court and ex officio recorder for the county aforesaid, certify that Mary Philip Leduc, before whom the foregoing acknowledgment was made, and whose name is subscribed thereto, was, on twenty-sixth day of March, eighteen hundred and thirty-nine, a justice for the county court for St. Louis county aforesaid, duly commissioned and qualified, and that full faith and credit are due to his acts as such.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office in the city of St. Louis, this twelfth day of June, A. D. eighteen hundred and forty-one.

[SEAL.] HENRY CHOUTEAU, *Clerk.*

STATE OF ILLINOIS, *County of Peoria:*

RECORDER'S OFFICE, *Peoria, June 15th,* 1841.

I, Charles Kettelle, recorder of said county of Peoria, do certify the foregoing deed and certificates of proof were duly recorded in said office, in book M, pages 56 and 57.

Given under my hand and private seal, (no official being provided,) this 16th day of June, A. D. 1841.

CHARLES KETTELLE, *R. P. Co.* [SEAL.

64 9. He then read to the jury the acts of Congress of Sept. 15, 1820, and the act of Congress of March 3d, 1823, with regard to Peoria French claims.

Whereupon the defendant, to maintain the issue on his part, read to the jury,—

1st. A patent from the United States to John L. Bogar-dus, which is as follows:

65 *Certificate No.* 13258.

The United States of America to all whom these presents shall come, greeting:

Whereas John L. Bogardies, of New York county, New York, has deposited in the General Land Office of the United States a certificate of the register of the land office at Quincy, whereby it appears that full payment has been made by the said John L. Bogardies according to the provisions of the act of Congress of the 24th of April, 1820, entitled "An act making further provision for the sale of the public lands" for the southeast fractional quarter of section nine in township eight north, of range eight east, in the district of lands subject

to sale at Quincy, Illinois, containing twenty-three acres and ninety-three hundredths of an acre, according to the official plot of the survey of the said lands returned to the General Land Office by the surveyor general, which said tract has been purchased by the said John L. Bogardsu:

Now, know ye, that the United States of America, in consid-
66 eration of the premises, and in conformity with the several acts of Congress in such case made and provided, have given and granted, and by these presents do give and grant, unto the said John L. Bogardies, and to his heirs, the said tract above described, to have and to hold the same, together with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said John L. Bogardies, and to his heirs and assigns forever, subject, however, to the right of any and all persons claiming under the act of Congress of 3d March, 1823, entitled "An act to confirm certain claims to lots in the village of Peoria, in the State of Illinois.

In testimony whereof, I, Martin Van Buren, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand, at the city of Washington, the fifth day of January, in the year of our Lord one thousand eight hundred and thirty-eight, and of the independence of the United States the eighty-second.

By the President: MARTIN VAN BUREN,
[L. S.] By A. VAN BUREN, *Sec'y.*

Recorded vol. 1, page 149.

HUDSON M. GARLAND,
Recorder of the General Land Office.

67 2. A deed from John L. Bogardus to Lewis Bigelow and Samuel C. McClure, dated July 13, 1832, which is as follows:

Know all men by these presents that I, John L. Bogardus, of Peoria, in the county of Peoria, and State of Illinois, in consideration of five thousand dollars to me paid by Lewis Bigelow and Samuel C. McClure, of said Peoria, the receipt whereof is hereby acknowledged, do hereby bargain, grant, sell, and convey unto the said Bigelow and McClure, their heirs and assigns forever, two undivided third parts of all my right, title, and interest in and unto the southeast fractional quarter of section nine in township eight north, range eight east, in the military tract in said Illinois, together with two third parts of the ferry established over the river Illinois at the outlet of Lake Peoria, with the boats, scows, and other craft belonging to the said ferry, and all the implements and apparatus thereto belonging: to have and to hold the same to the said Bigelow and McClure, their heirs and assigns forever, with all the privileges and appurtenances thereto belonging.

68 And I do hereby covenant with the said Bigelow and McClure that if at any time hereafter I shall acquire any further or additional title to the said lot of land, the same shall enure to them in proportion to the interest hereby conveyed to them.

In witness whereof, I, the said John L. Bogardus, hereunto set my hand and seal this thirteenth day of July, A. D. 1832.

JNO. L. BOGARDUS.

Signed, sealed, and delivered in presence of--
WARREN B. G. BOGARDUS.

STATE OF ILLINOIS, *Peoria county, ss:*

On the third day of June, A. D. 1833, came Stephen Stillman, a competent and creditable witness, and personally known to me, and made oath that he personally knows the grantor in the within deed, John L. Bogardus, and well knows his signature, having lived near him several years, and having frequently seen him write his name, and that he believes the name of John L. Bogardus which is subscribed to said deed, is his handwriting, and was subscribed thereto by him, the said Bogardus; and, further, the said Stephen Stillman
69 made oath that he personally knew Warren B. G. Bogardus, whose name is subscribed as a witness to the within deed, and well knows his signature, having frequently seen him write both his signature and other writing, and that he believes the name of the said Warren B. G. Bogardus subscribed as aforesaid to be the handwriting of and subscribed by him, the said Warren.

In testimony whereof, I have hereunto set my hand and affixed the seal of the circuit court of the county aforesaid this third day of June, A. D. 1833.

[SEAL.] ISAAC WATERS, *Cl'k Cir. Court.*

STATE OF ILLINOIS, *Peoria county, ss:*

RECORDER'S OFFICE.

I. W. A. Stewart, recorder of Peoria county, do hereby certify that the within deed and affidavit was this day duly recorded in my office in book D, pages 181 and 182.

Given under my hand and seal this eighth day of August, A. D. 1834.

P. pro. W. A. STEWART, *R. P. C., &c.*,
WILLIAM MITCHELL.

70 STATE OF NEW YORK, *County of Rensselaer, ss:*

Be it remembered that on this twenty-seventh day of June, A. D. 1856, came before me Marion Bogardus, to me personally known, and who being by me first duly sworn, did depose and say that she was personally acquainted with John L. Bogardus and Warren B. G. Bogardus, whose names are subscribed to the foregoing deed as a party grantor and witness; that said John L. Bogardus and Warren B. G. Bogardus, at the time of the execution of said deed, resided in Peoria, in the State of Illinois, and that said John L. Bogardus died in said Peoria, Illinois, in the month of June, A. D. 1838, and that said Warren B. G. Bogardus also died in said Peoria in the month of February, A. D. 1833; that she has frequently seen said John L. Bogardus and Warren B. G. Bogardus write, and is well acquainted with
71 their handwriting, and verily believes from her knowledge of their handwriting that the name of said John L. Bogardus sub-

scribed to said deed as grantor, and the name of said Warren B. G. Bogardus subscribed to said deed as a witness thereto, were thereto subscribed by the said John L. and Warren B. G. Bogardus.

In witness whereof, I have hereunto set my hand and affixed my seal notarial this twenty-seventh day of June, A. D. 1856.

[SEAL.] PHILIP H. BAERMANN,
Notary Public.

STATE OF ILLINOIS, *County of Peoria, ss:*

I, Thomas Mooney, jr., clerk of the circuit court in and for the county of Peoria and State of Illinois, and ex officio recorder of deeds in said county, do hereby certify that the annexed deed was filed for record in my office on the 10th day of April, 1865, and has been duly recorded, with the accompanying certificate, on pages 505–6 in book O B, in said recorders' office.

72 In witness whereof, I have hereunto affixed the seal of the said circuit court, at my office in Peoria, this 10th day of April, 1865.

[SEAL.] THOMAS MOONEY, JR.,
Clerk and Recorder.

3. A deed from Samuel C. McClure to Lewis Bigelow, dated June 6, 1833, which is as follows:

Know all men by these presents that I, Samuel C. McClure, of Peoria, in the county of Peoria and State of Illinois, in consideration of three hundred dollars to me paid by Lewis Bigelow, of said Peoria, the receipt whereof I do hereby acknowledge, do hereby grant, sell, and convey unto the said Bigelow, his heirs and assigns, all my right, title, and interest in and unto the southeast fractional quarter of section nine in township eight north, range eight east, situated in said county, with all the buildings and improvements thereon, and also in and unto the ferry established over the Illinois river adjoining said lot of land, with the boats, scows, craft, and apparatus thereto belonging: to have and to hold the above granted premises to

73 the said Bigelow, his heirs and assigns, forever.

In witness whereof, I, the said Samuel C. McClure, have hereunto set my hand and seal this sixth day of June, in the year of our Lord one thousand eight hundred and thirty-three.

SAM'L C. McCLURE. [SEAL.]

Signed, sealed, and delivered in presence of—
STEPHEN STILLMAN.
H. HATCH.

STATE OF ILLINOIS, *Peoria county:*

On the eighth day of June, A. D. 1833, came Samuel C. McClure, above named, who is personally known to me to be the person whose name is subscribed to the above deed, and acknowledged the same to be his free act and deed, before me.

STEPHEN STILLMAN, *J. P.*

STATE OF ILLINOIS, *Peoria county, ss:*

I, Charles Kettelle, clerk of the county court of said county, do certify that Stephen Stillman, before whom the within deed purports to have been acknowledged was, on the day of the date of the
74 said acknowledgment; and before and after that time, an acting justice of the peace in and for the county of Peoria, duly commissioned and qualified; that I am acquainted with his handwriting, and believe the signature "Stephen Stillman" to the said acknowledgment to be genuine, and in the proper handwriting of the said Stephen Stillman.

Witness my hand and the seal of the said court, at Peoria, this 4th day of April, A. D. 1854.

[SEAL.] CHARLES KETTELLE, *Cl'k.*

STATE OF ILLINOIS, *Recorder's office, Peoria county:*

I, William A. Stewart, recorder of Peoria county, do certify that the within deed and acknowledgment is duly recorded this day in my office in book D, page 76.

June 13th, 1833.

WM. A. STEWART, *Recorder, P. C.*

75 4. A deed from Lewis Bigelow to Isaac Underhill dated Aug. 23, 1834, which is as follows:

No. 139. Know all men by these presents that I, Lewis Bigelow, of Peoria, in the State of Illinois, in consideration of one thousand dollars to me paid by Isaac Underhill, of said Peoria, the receipt whereof I do hereby acknowledge, do hereby grant, sell, and convey unto the said Isaac, his heirs and assigns, an undivided moiety of all my right, title, and interest in and unto the southeast fractional quarter of section nine in township eight north and range eight east of the fourth principal meridian, situated in the county of Peoria, in said Illinois, and containing about twenty-five acres; excepting and reserving, however, so much of said lot of land as lies on the
76 northeast side of a line running in the course of Liberty to the Illinois river, as is included between said line, the said river, and the south line of the town of Peoria. Also an undivided moiety of the ferry established over the Illinois river at the place aforesaid, and adjoining said lot of land, and of the boats, skiffs, and other craft belonging to the said ferry, and the implements and apparatus appertaining thereto: to have and to hold the same to the said Isaac, his heirs and assigns, forever.

In witness whereof, I, the said Lewis Bigelow, have hereunto set my hand and seal this twenty-third day of August, A. D. 1834.

[SEAL.] LEWIS BIGELOW.

Signed, sealed, and delivered in presence of—

RA. HAMLIN.

STATE OF ILLINOIS, *Peoria county:*

On the 23d day of August, A. D. 1834, personally appeared before me, the subscriber, a justice of the peace within and for the said county of Peoria, Lewis Bigelow, named in the foregoing deed, and who is personally known to me to be the person whose name
77 is subscribed thereto, and acknowledged the same to be his free act and deed.

A. M. HUNT, *J. P.*

STATE OF ILLINOIS, *Peoria county, ss:*

I, Enoch P. Sloan, clerk of the circuit court and ex officio recorder for the county of Peoria, in the State of Illinois, do hereby certify that the foregoing is a full and correct copy from the records of a deed and of the certificate of acknowledgment thereof, as the same stands recorded on page 138, in book D, in the recorder's office of said county.

Witness my hand and the seal of said court hereunto affixed at my office in Peoria this 13th day of January, in the year one thousand eight hundred and sixty.

[SEAL] ENOCH P. SLOAN,
Clerk and Recorder.

5. A deed from John L. Bogardus to Isaac Underhill, dated Aug. 5, 1834, which is as follows:

Know all men by these presents that I, John L. Bogardus, of Peoria, in the county of Peoria and State of Illinois, in consider-
78 ation of one thousand and fifty dollars to me in hand paid by Isaac Underhill, of said Peoria, the receipt of which I do hereby acknowledge, do hereby grant, sell, and convey unto said Underhill all my right and interest in and unto the *the* southeast fractional quarter of section nine, in township eight north, range eight east of fourth principal meridian, in said Illinois; and also in and unto the ferry established across the Illinois river, in said Peoria, together with the boats and other implements thereunto belonging: to have and to hold the same to the said Underhill, his heirs and assigns, forever, with all the privileges and appurtenances thereunto belonging.

In witness whereof, I have hereunto set my hand and seal this 5th day of August, A. D. 1834.

[SEAL.] JNO. L. BOGARDUS.

Signed, sealed, and delivered in presence of—
ORIN HAMLIN.

STATE OF ILLINOIS, *Peoria county, ss:*

This day personally appeared before the undersigned, an acting justice of the peace in and for Peoria county, John L. Bogar-
79 dus, who being personally known to me to be the same person, and acknowledged the within to be his act and deed for the use and purposes therein contained.

Given under my hand and seal this fifth day of August, one thousand eight hundred and thirty-four.

[SEAL.] ORIN HAMLIN, *J. P.*

STATE OF ILLINOIS, *Peoria county, ss:*

RECORDER'S OFFICE.

I, W. A. Stewart, recorder in and for said county, do hereby certify the within deed and acknowledgment was this day duly recorded in my office, in book D, pages 182 and 183.

Given under my hand and seal this 13th day of August, 1834.

[L. S.] P. pro W. R. STEWART, *R. and C.*,
WILLIAM MITCHELL.

STATE OF ILLINOIS, *Peoria county:*

I, Andrew M. Hunt, a justice of the peace within and for the said county of Peoria, do hereby certify that on this 30th day of April, A. D. 1836, came before me Orin Hamlin, who is personally
80 known to me to be the person whose name appears subscribed to the foregoing deed as a witness of the execution thereof, and testified upon oath that John L. Bogardus, whose name appears subscribed to said deed, is the real person who executed the same, and that he, the said witness, subscribed his name as such in his presence and at his request.

[L. S.] A. M. HUNT, *J. Peace.*

STATE OF ILLINOIS, *Peoria county, ss:*

CLERK'S OFFICE.

I, William Mitchell, clerk of the county commissioners' court for said county, do hereby certify that A. M. Hunt, esquire, whose name appears to the foregoing certificate, was, on the day of the date thereof, an acting justice of the peace in and for the county aforesaid, duly commissioned and qualified, as it appears to me of record in my office, and that as such full faith and credit are due to all his official acts.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at Peoria, this 30th day of April, 1836.

[SEAL.] WILLIAM MITCHELL, *Clerk.*

81 STATE OF ILLINOIS, *Peoria county:*

RECORDER'S OFFICE.

I, Enoch P. Sloan, clerk of the circuit court in and for the county of Peoria, in the State of Illinois, and ex officio recorder of deeds in said county, do hereby certify that the annexed instrument was filed for record in my office on the 21st day of November, A. D. 1863, and has been duly recorded with the accompanying certificates on page 632, in book I B, in said recorder's office.

In witness whereof, I hereunto set my hand and affix the seal of the said circuit court, at my office in Peoria, this 21st day of November, A. D. 1863.

ENOCH P. SLOAN, *Clerk and Recorder.*

6. He next introduced a decree of the Peoria circuit court in the case of Underhill *vs.* Cole *et al.*, which is as follows:

82 Proceedings in chancery at a term of the circuit court of Peoria county, Illinois, begun and held at the court-house in the city of Peoria, in said county and State, on the first Monday of December, in the year of our Lord one thousand eight hundred and sixty-one, the same being on the second day of said month. Present: the honorable Amos L. Merriman, judge of the 16th judicial circuit in said State; James Stewart, sheriff; and Enoch P. Sloan, clerk, to wit:

MONDAY, *December 9th, A. D.* 1861.

ISAAC UNDERHILL
vs.
SETH L. COLE, MARION BOGARDUS, PEORIA ANN BOGARDUS, the unknown heirs of WILLIAM M. C. BOGARDUS, GEORGE C. BESTOR, GEORGE T. METCALF. } Injunction.

This cause coming on to be heard, upon the bill, exhibits, and
83 proofs, the said complainant saith he will no further prosecute this suit as to the said George C. Bestor and George T. Metcalf. It is therefore ordered, adjudged, and decreed that this suit, as to them, be dismissed. And it appearing to the court that the said Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus, are, and at the time of the commencement of this suit were, non-residents of the State of Illinois, and that the said Seth L. Cole, at the time of commencing this suit, concealed himself for the purpose of evading process in this suit, and upon due inquiry could not be found, but immediately after the commencement thereof, and before process could be served on him, left the State of Illinois, and has never since returned to said State; and it further appearing to the court, that notice had been given of the pendency of this suit to said defendants, by publishing the same in the Peoria Register, a weekly newspaper published in Peoria, Peoria county and State of Illinois, for four weeks successively, the first publication having been made on the seventh day of November, A. D. 1845,
by which said defendants were informed that this suit was then
84 pending in said circuit court, and that the summons therein to said defendants was returnable to the May term of said court, to be holden at the court-house in the city of Peoria, in said county, on the fourth Monday of May then next following, and that a writ of injunction had issued out of said court, under the seal thereof, against said defendants, and that unless said defendants should appear before the circuit court of said county on the first day of the term thereof, to be holden as aforesaid, and plead, answer, or demur to said complainant's bill, that the matters and things therein stated would be taken for confessed, and a decree entered according to the prayer thereof; and it further appearing to the court that another notice was published in said public newspaper, for the same time, whereby said complainant notified said defendants that said complainant had exhibited his bill to the judge of said Peoria circuit court, acting as chancellor against said defendants, wherein, among

other things, it was alleged that one John L. Bogardus, in his lifetime, now deceased, sold and conveyed to the said complainant the southeast fractional quarter of section No. nine, of township
85 eight north, in range eight east of the fourth principal meridian, for the sum of one thousand and fifty dollars; that the said John L. Bogardus has since deceased, leaving the said Marion Bogardus his widow, and said Peoria Ann Bogardus and William M. C. Bogardus his heirs; that the said William M. C. Bogardus has since deceased, leaving heirs unknown to said complainant; that the said conveyance to said Underhill by said John L. Bogardus is represented by said Cole to be defective and void, and said Cole, by false representations, has procured said Marion Bogardus and Peoria Ann Bogardus to convey said tract of land to him, the said Cole; and that you, the said defendants, threaten to sell and convey said tract of land to others, well knowing the previous sale to said Underhill, and that whatever right and title the said Marion and Peoria Ann had from the said John L. Bogardus of right belongs to and should be conveyed to said Isaac Underhill; and that upon the filing of said bill, the judge of said court had granted an injunction in said case, strictly enjoining and commanding said defendants that they should absolutely and entirely desist from making any conveyance of
86 all or any part of said lands, or of its sub-divisions into town lots, or of making any contracts for the sale thereof, or any part thereof, either by themselves, or as agents or solicitors, until said court should make other order to the contrary; and it further appearing to the court, that said Peoria Ann Bogardus has long since ceased to be an infant, and is of full age, and the said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, being three times solemnly called, came not, but made default: It is therefore considered by the court that said bill, and the matters and things therein contained, as to the said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus be taken pro confesso.

And it further appearing to the court that said John L. Bogardus, previous to the fifth day of July, 1834, had such possession and had made such improvement in the southeast fractional quarter section No. nine in township eight north, of range eight east of the fourth principal meridian, as entitled him to a pre-emption thereto, under the acts of Congress, and had filed such proofs at the proper land office as entitled him to a pre-emption thereto, and had obtained
87 from the proper register a certificate to that effect, but said land could not then be entered at the proper land office for the reason that the official plats had not then been furnished by the United States surveyor to the register of the proper land office.

And it further appearing to the court that on said fifth day of July, 1834, said Underhill, for the consideration of one thousand and fifty dollars, purchased of said Bogardus all his right, title, and interest in said tract of land, with a distinct understanding that said Underhill should enter said land at the proper land office, under and by virtue of said pre-emption right, with his own money, for his own use, and, if necessary, in the name of said Bogardus.

And it further appearing that said complainant then and there

with the consent of said Bogardus, did take possession of said premises, and, as soon as the official plats were furnished to the proper land office, to wit, on the 15th day of November, A. D. 1837, said Underhill, with his own money, and for his own use, did buy said land by virtue of said pre-emption right, in the name of said Bogardus, and afterwards, to wit, on the fifth day of January, A. D. eighteen hundred and thirty-eight, the United States granted a
88 patent to said Underhill, but in the name of said Bogardus, for said tract of land.

And it further appearing to the court that although said Bogardus lived in Peoria long after said patent was obtained in his name by said Underhill, who was all that time in possession of the premises, he made no objection to said Underhill's title and possession of said premises, but acquiesced therein.

And it further appearing to the court that said Bogardus, on the seventh day of June, 1838, departed this life in Peoria, but not on the land in dispute, and that before he departed this life he made a will, in which he appointed said Marion Bogardus his executrix of said will, with full power to sell and convey any lands of which he died seized, for the payment of his debts.

And it further appearing to the court that said deed from said Bogardus to said Underhill, by reason of it being a mere quit-deed, without covenants of warranty, and having been executed before the issuing of said patent did not carry at law the after-acquired title to said premises, but that by virtue of said purchase by Underhill of Bogardus, and the judgment to the United States by virtue
89 of said pre-emption, the money due to them for the same by said Underhill, and the open, exclusive, and uninterrupted possession thereof by said Underhill, the equitable title to the same was vested in him; of all of which, it appears to the court, said Cole, and said Marion Bogardus and Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus, had notice before the execution of said deed to said Cole:

It is therefore ordered, adjudged, and decreed by the court here that the injunction in this case heretofore granted be made perpetual, and that said defendants be and they hereby are perpetually and forever enjoined from selling, mortgaging, or in anywise disposing of said tract of land, or in anywise setting up title thereto, or interfering with the possession thereof by said complainant, or any one holding or claiming under him.

It is further ordered, adjudged, and decreed that the said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus, execute and deliver to said complainant, or deliver into court for his use, on or before the opening of
90 court on next Monday morning, a good and sufficient deed of conveyance, effectually conveying to said complainant all the right, title, and interest that they or either of them have or had at the date of the granting of the injunction herein. And in case they, or either of them, shall fail to obey this order, then Leslie Robison is hereby appointed a special master in chancery for that purpose,

and the interest of any of said defendants that shall not be conveyed as aforesaid, he shall convey to said complainant, and report his proceedings to the court for its approval.

And afterwards, to wit, on the 10th day of December, A. D. 1861, there was filed in the office of the clerk of the circuit court the report of the special master in chancery in said cause, in words and figures following, to wit:

In the circuit court of Peoria county, in the State of Illinois, in chancery.

ISAAC UNDERHILL
vs.
SETH L. COLE *et al.*

Leslie Robison, special master in this case, by this honorable court appointed to make a deed to said Underhill, in case said de-
91 fendants should fail to do so in pursuance of a decree of this court on a former day of this term of the court, begs leave to report that said defendants, and each and every one of them, wholly neglected and failed to execute a deed to said Underhill, pursuant to said decree. Whereupon, at the request of said Underhill's solicitor, I did, on this day, execute to said Underhill a deed to said premises, in pursuance of said decree, which deed is hereunto presented to the court for its approval, provided it be found to be in accordance with said decree. All of which is respectfully submitted.

LESLIE ROBISON,
Special Master in Chancery.

MONDAY, *December 10th, A. D.* 1861.

ISAAC UNDERHILL
vs.
SETH L. COLE *et al.*

This day this cause coming on to be heard upon the special master's report, and it appearing that said defendants had wholly neglected and failed to make a deed to said complainant, as they were required to do by a former order of this court, and thereupon said
92 special master did execute to said Underhill a deed for said premises pursuant to said decree, which deed is now shown to the court for its approval; and the said deed appearing upon the inspection of the court here to be regular and in all respects correct, it is therefore ordered, adjudged, and decreed by the court that the proceedings of said special master be and they are hereby approved by the court. And said deed is hereby made valid and effectual to vest in said Underhill whatever title said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus, had at the date of the allowance of said injunction. And, further, that said deed be delivered to said Underhill, or his legally authorized attorney.

STATE OF ILLINOIS, *Peoria county, ss:*

I, Enoch P. Sloan, clerk of the circuit court within and for said county, do hereby certify that the foregoing is a true and complete copy of a decree rendered in said court on the ninth day of
93 December, A. D. 1861, of the report of the special master in chancery, and of the final decree of said court on the 16th day of December, A. D. 1861, in the cause wherein Isaac Underhill was complainant, and Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, the unknown heirs of William M. C. Bogardus, George C. Bestor, and George T. Metcalf were defendants, as the same remains of record and on file in my office.

Given under my hand and the seal of said circuit court, at Peoria, this 15th day April, in the year of our Lord one thousand eight hundred and sixty-two.

[SEAL.] ENOCH P. SLOAN, *Clerk,*
Per I. NEWTON, *Dep'ty.*

The people of the State of Illinois to the sheriff of Peoria county, greeting:

We command you to summon Marion Bogardus, Peoria Ann Bogardus, and the heirs of William M. C. Bogardus, impleaded with Seth L. Cole, George C. Bestor, and George T. Metcalf, if they may be found in your county to appear before our circuit court on the first day of the term thereof, to be holden at Peoria within and for
94 the said county of Peoria, on the fourth Monday of May next, then and there, in our said court, to answer the matters and things alleged in a certain bill of complaint exhibited against in our said court, on the chancery side thereof, by Isaac Underhill, complainant, and make return of this writ, with an indorsement of the time and manner of serving the same, on or before the first day of the term of said court, to be held aforesaid.

Witness Jacob Gale, clerk of our said court, and the seal thereof, at Peoria, this thirtieth day of October, in the year of our Lord one thousand eight hundred and forty-five.

[SEAL.] JACOB GALE, *Clerk.*

Indorsed: Underhill *vs.* Cole *et als.* Summons returned December 1st, 1845. Jacob Gale, clerk.—Powell & Bryan, sol's for compl'ts.

The within-named persons are not found in my county. Smith Foye, sh'ff, by C. C. Wood, d'y.

STATE OF ILLINOIS, *Peoria co., ss:*

I, Enoch P. Sloan, clerk of the circuit court in and for said
95 county and State, do hereby certify that this instrument of writing is a full, true, and complete transcript of the original summons issued in said cause, together with all the indorsements and return of the sheriff thereon, as the same appears on file in my office.

Given under my hand and seal of said court, at Peoria, this 27th day of September, A. D. 1864.

[SEAL.] ENOCH P. SLOAN, *Clerk.*

7. Next a deed from the master in chancery made in pursuance of said decree, which is as follows:

This indenture made and entered into this tenth day of December, A. D. 1861, between Leslie Robison, special master in chancery for the circuit court of Peoria, in the chancery side thereof, for the purposes hereinafter expressed, appointed, and Isaac Underhill witnesseth, that whereas, on the seventh day of this present month, said court in a certain cause then pending before it, wherein Isaac Underhill was complainant and Seth L. Cole and others were defendants, decreed as follows, to wit:

96 In the circuit court of Peoria county and State of Illinois, on the chancery side thereof.

ISAAC UNDERHILL
vs.
SETH L. COLE, MARION BOGARDUS, PEORIA Ann Bogardus, the unknown heirs of William M. C. Bogardus, George C. Bestor, George T. Metcalfe.

This cause coming on to be heard upon the bill, exhibits, and proofs, the said complainant saith he will not further prosecute this suit as to the said George C. Bestor and George T. Metcalfe; it is therefore ordered, adjudged, and decreed that this suit as to them be dismissed; and it appearing to the court that said Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus are, and at the time of the commencement of this suit were, non-residents of the State of Illinois, and that the said Seth L. Cole, at the time of the commencement of this suit, concealed himself for the purpose of evading process in this suit, and upon due inquiry could not be found,
but immediately after the commencement thereof left the
97 State of Illinois, and has never since returned to said State.
And it further appearing to the court that notice had been given of the pendency of this suit to said defendants, by publishing the same in the Peoria Register, a weekly newspaper published in Peoria, Peoria county and State of Illinois, for four weeks successively, the first publication having been made on the seventh day of November, A. D. 1845, by which said defendants were informed that this suit was then pending in said circuit court, and that the summons therein to said defendants was returnable to the May term of said court to be holden at the court-house in the city of Peoria, in said county, on the fourth Monday of May then next following, and that a writ of injunction had issued out of said court under the seal thereof, against said defendants, and that unless said defendants should appear before the circuit court of said county on the first day of the term thereof to be holden as aforesaid, and plead, answer, or demur to complainant's bill, that the matters and things therein stated would be taken for confessed, and a de-
98 cree entered according to the prayer thereof. And it further appearing to the court that another notice was published in

said public newspaper for the same space of time, whereby said complainant notified said defendants that said complainant had exhibited his bill to the judge of said Peoria circuit court, acting as chancellor, against said defendants, wherein, among other things, it was alleged that one John L. Bogardus, in his lifetime (now deceased,) sold and conveyed to the said complainant the southeast fractional quarter of section No. nine, of township eight north, in range eight east of the fourth principal meridian, for the sum of one thousand and fifty dollars; that the said John L. Bogardus has since deceased, leaving the said Marion Bogardus, his widow, and said Peoria Ann Bogardus, and William M. C. Bogardus his heirs.

That the said William M. C. Bogardus has since deceased, leaving heirs unknown to said complainant; that the said conveyance to said Underhill by said John L. Bogardus is represented by said Cole to be defective and void, and said Cole, by false representations, has procured said Marion Bogardus and Peoria Ann Bogardus to
99 convey said tract of land to him, the said Cole, and that you, the said defendants, threaten to sell and convey said tract of land to others, well knowing the previous sale to said Underhill, and that whatever right and title the said Marion and Peoria Ann had from said John L. Bogardus, of right belongs to and should be conveyed to said Isaac Underhill, and that upon the filing of said bill the judge of said court had granted an injunction in said case, strictly enjoining and commanding said defendants that they should absolutely and entirely desist from making any conveyance of all or any part of said land, or of its subdivisions into town lots, or of making any contracts for the sale thereof, or any part thereof, either for themselves or as agents or solicitors, until said court should make other order to the contrary.

And it further appearing to the court that said Peoria Ann Bogardus has long since ceased to be an infant, and is of full age, and the said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus, being three times
100 solemnly called, came not, but made default; it is therefore considered by the court that said bill, and the matters and things therein contained as to the said Seth L. Cole, Marion Bogardus and Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus be taken pro confesso.

And it further appearing to the court that said John L. Bogardus, previous to the fifth day of July, 1834, had such possession and had made such improvements on the southeast fractional quarter section No. nine, in township eight north, of range eight east of the fourth principal meridian, as entitled him to a pre-emption right thereto under the acts of Congress, and had filed such proofs at the proper land office as entitled him to a pre-emption thereto, and had obtained from the proper register a certificate to that effect, but said land would not then be entered at the proper land office for the reason that the official plats had not then been furnished by the United States surveyor to the register of the proper land office.

And it further appearing to the court that on said fifth day of July

101 1834, said Underhill, for the consideration of one thousand and fifty dollars, purchased of said Bogardus all his right, title, and interest in said tract of land, with a distinct understanding that said Underhill should enter said land at the proper land office under and by virtue of said pre-emption right, with his own money, for his own use, and, if necessary, in the name of said Bogardus.

And it further appearing to the court that said complainant then and there, with the consent of said Bogardus, did take possession of said premises, and as soon as the official plats were furnished to the proper land office, to wit, on the 15th day of November, A. D. 1837, said Underhill, with his own money and for his own use, did buy said land by virtue of said pre-emption right, in the name of said Bogardus; and afterward, to wit, on the fifth day of January, A. D. 1838, the United States granted a patent to said Underhill, but in the name of said Bogardus, for said tract of land.

And it further appearing to the court that although said Bogardus lived in Peoria long after said patent was obtained in his name
102 by said Underhill, who was all that time in possession of the premises, he made no objections to said Underhill's title and possession of said premises, but acquiesced therein.

And it further appearing to the court that said Bogardus, on the seventh day of June, 1838, departed this life in Peoria, but not on the land in dispute, and that before he departed this life he made a will, in which he appointed said Marion Bogardus his executrix of said will, with full power to sell and convey any lands of which he died seized for the payment of debts.

And it further appearing to the court that said deed from said Bogardus to said Underhill, by reason of its being a mere quit-claim deed without covenants of warranty, and having been executed before the issuing of said patent, did not carry at law the after-acquired title to said premises, but that by virtue of said purchase by Underhill of Bogardus and the payment to the United States by virtue of said pre-emption the money due to them for the same by said Underhill, and the open, exclusive, and uninterrupted possession
103 thereof by said Underhill, the equitable title to the same was vested in him; all of which, it appears to the court, said Cole, and said Marion Bogardus, and said Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus had notice before the execution of said deed to said Cole:

It is therefore ordered, adjudged, and decreed by the court here that the injunction in this case heretofore granted be made perpetual, and that said defendants be and they hereby are perpetually and forever enjoined from selling, mortgaging, or in anywise disposing of said tract of land, or in anywise setting up title thereto or interfering with the possession thereof by said complainant or any one holding or claiming under him.

It is further ordered, adjudged, and decreed that the said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus, execute and deliver to said complainant, or deliver into court for his use, on or before the opening of court on next

Monday morning, a good and sufficient deed of conveyance,
104 effectually conveying to said complainant all the right, title, and interest that they, or either of them, have or had at the date of the granting of the injunction herein; and in case they, or either of them, shall fail to obey this order, then Leslie Robison is hereby appointed a special master in chancery for that purpose, and the interest of any of said defendants that shall not be conveyed as aforesaid, he shall convey to said complainant, and report his proceedings to the court for its approval. And whereas the said day on which said deed was ordered to be executed by said Seth L. Cole, Marion Bogardus, Peoria Ann Bogardus, and the unknown heirs of William M. C. Bogardus has passed, and all said defendants have wholly failed to obey said decree: Now, therefore, the said Leslie Robison, special master as aforesaid, in consideration of the premises and the further consideration of one dollar to him in hand paid by said Underhill, the receipt whereof is hereby acknowledged, has bargained, sold, and conveyed, and by these presents doth bargain, sell, and convey unto the said Isaac Underhill, his heirs and assigns, the southeast fractional quarter of section nine of township eight
105 north, range eight east of the fourth principal meridian; together with all the appurtenances thereunto belonging or in anywise appertaining: To have and to hold the said tract of land and appurtenances to the said Isaac Underhill, his heirs and assigns, for his and their own proper use and behoof forever.

In witness whereof the said Leslie Robison has hereunto subscribed his name and affixed his seal the date aforesaid.

LESLIE ROBISON, [SEAL.]
Special Master in Chancery.

The words "Marion Bogardus, his widow," on the third page, were erased before signing.

LESLIE ROBISON.

I, Enoch P. Sloan, clerk of said court, do hereby certify that on the 10th day of December, 1861, Leslie Robison, as special master in chancery, and who is personally known to me to be the identical person whose name is subscribed to the foregoing deed as having executed the same, and acknowledged the execution thereof to be his act and deed as such special master, for the uses and purposes therein set forth.

106 Given under my hand and seal of said court, at Peoria, this 10th day of December, A. D. 1861.

[SEAL.] ENOCH P. SLOAN, *Clerk.*

STATE OF ILLINOIS, *Peoria county:*

RECORDER'S OFFICE.

I, Enoch P. Sloan, clerk of the circuit court in and for the county of Peoria, in the State of Illinois, and ex officio recorder of deeds in said county, do hereby certify that the annexed deed was filed for record in my office on the 10th day of December, A. D. 1861, and has been duly recorded, with the accompanying certifiates, on page 268 and following, in book H B, in said recorder's office. In witness whereof, I hereto set my hand and affix the seal of the said

circui tcourt, at my office, in Peoria, this 10th day of December, A. D. 1861.

[SEAL.] ENOCH P. SLOAN,
Clerk and Recorder.

8. A deed from Isaac Underhill to Aquila Wren, dated December 7, 1841, which is as follows:

107 2D FEB'Y, 1842.

This deed, made this 7th day of December, eighteen hundred and forty-one, witnesseth that Isaac Underhill and Jane S. Underhill, his wife, of the town of Peoria, county of Peoria, State of Illinois, in consideration of four hundred dollars to them paid by Aquilla Wren, of the county of Peoria, State of Illinois, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell, convey, and confirm to the said Aquilla Wren the following described real estate, viz: lot No. one (1) in block No. fifty (50) in Bigelow and Underhill's addition to Peoria, as laid off in 1836, being 60 feet front, running through to the river: to have and to hold the above-described premises, with the appurtenances thereunto belonging, to the said Aquila Wren, his heirs and assigns, forever; the said Isaac Underhill and Jane S. Underhill hereby covenanting that they will warrant and defend the title to the aforesaid premises to the said Aquilla Wren, his heirs and assigns, forever, against all persons, except those claiming under the act of Congress passed March 3d, 1823, called French claims.

108 In testimony whereof the said Isaac and Jane S. Underhill have hereunto set their hands and seals the day and year above written.

[SEAL.] ISAAC UNDERHILL.
[SEAL.] JANE S. UNDERHILL.

Done in presence of—
DENNIS BLAKELY.

STATE OF ILLINOIS, *County of Peoria, ss:*

I, Dennis Blakely, an acting justice of the peace within and for the county aforesaid, do certify that Isaac Underhill and Jane S., his wife, whose signatures appear to the foregoing deed, and who are personally known to me to be the persons described in and who executed the same, did severally acknowledge that they executed the said conveyance for the uses and purposes therein mentioned; and the said Jane S. Underhill having been by me made acquainted with the contents of said deed, and examined separate and apart from her said busband, acknowledged that she executed the same, and relinquished her dower to the premises therein conveyed, voluntarily, freely, and without compulsion of her said husband.

Given under my hand and seal this seventh day of Decem-
109 ber, in the year of our Lord one thousand eight hundred and forty-one.

[SEAL.] DENNIS BLAKELY, *J. P.*

STATE OF ILLINOIS, *Peoria county, ss:*

I, Thomas Mooney, jr., clerk of the circuit court, and ex officio

recorder in and for said county, do hereby certify that the foregoing instrument of writing, with the accompanying certificate, is a true and correct copy of a deed filed in my office on the 2d day of Feb'y, A. D. 1842; executed by Isaac Underhill and Jane S. Underhill, his wife, to Aquilla Wren, and recorded in book M, pages 329 and 330, as the same appears of record in my office.

In testimony whereof, I have hereunto set my hand and the seal of said court this 8th day of March, A. D. 1865.

[SEAL.] THOMAS MOONEY, JR.,
Clerk and ex officio Recorder.

9. Exemplification of Aquila Wren's will, which is as follows:

I, Aquilla Wren, of Peoria, Peoria county, Illinois, do make and publish this my last will and testament, hereby revoking and
110 annulling all former wills and testaments whatsoever.

Item. My will is that all my just debts shall be paid, together with my necessary funeral expenses.

Item. I give and bequeath to the daughters of my sister Sarah Bobo, who resides in Athens county, in the State of Ohio, and to each of them now living, the sum of two hundred dollars each, to be paid to them by my executor at the earliest opportunity after the same can be raised out of my estate.

Item. I give and bequeath all the residue of my estate, both real and personal, of every description and character, to my brother Thomas Wren and to his heirs and assigns forever.

And I do hereby nominate and appoint my friend William S. Moss my executor to carry into full and complete effect the provisions of my will before stated.

Witness my hand and seal this 29th day of July, A. D. 1844.

[SEAL.] A. WREN.

Executed in presence of—
N. H. PEUPLE.
SMITH FRYE.
A. O. GARRETT.

111 STATE OF ILLINOIS, *Peoria co., ss:*

We, Norman H. Peuple and A. O. Garrett, do solemnly affirm that we were present and saw Aquila Wren sign this instrument as his last will and testament, and that we believed him at the time, and still do believe him, to have been of sound mind and memory at the time of executing said instrument, and that we, at his request, signed our names as subscribing witnesses thereto.

N. H. PEUPLE.
A. O. GARRETT.

Subscribed and affirmed to before me this 19 day of Aug., 1844.
WM. H. FESSENDEN, *P. J. P.*

STATE OF ILLINOIS, *County of Peoria, ss:*

I, Charles Kettelle, clerk of the county court of Peoria county, State of Illinois, do hereby certify that the foregoing is a full, true, and perfect copy of the last will and testament of Aquilla Wren,

112 late of Peoria county, deceased, as appears of record in my office.

Witness my hand and official seal at Peoria, this eighth day of March, A. D. 1865.

[SEAL.] CHARLES KETTELLE, *Clerk.*

[5-cent rev. stamp, cancelled.]

10. He then proved by a witness that Aquila Wren has been dead for above twenty years.

11. A deed from Thomas Wren, heir-at-law and devisee of Aquila Wren, to John McDougall, dated Sept. 28, 1848, which is as follows:

Know all men by these presents that I, Thomas Wren, of the city and county of Peoria, in the State of Illinois, in consideration of the sum of nine hundred dollars to me paid by John McDougal, of the same place, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell, and convey unto the said John McDougal, his heirs and assigns, the following described lot of land, situate in Bigelow and Underhill's addition to the city of Peoria aforesaid, and known as lot No. one (1) in block No. fifty, (50,) bounded as
113 follows, to wit: Beginning at the northerly corner of said lot, at the point of the intersection of Water and Harrison streets, thence southwesterly down Water street sixty feet to the line dividing said lot one (1) and two, (2,) thence at right angles southeasterly towards the Illinois river to the said river, thence up the line of said river to the intersection of Harrison street with said river, sixty feet in a straight line, thence up the line of Harrison street, to the point of beginning, the same lot being sixty feet wide front and rear, together with all and singular the hereditaments, appurtenances, and privileges thereto belonging or in anywise appertaining.

To have and to hold the same as above described, with the appurtenances and privileges, to him, the said John McDougal, his heirs and assigns, forever.

And I, the said Thomas Wren, for myself, my heirs, executors, and administrators, hereby covenant with the said John McDougal, his heirs, executors, administrators, and assigns, that excepting the claims of those persons who claim the same by virtue of what are
114 commonly known and called in said Peoria as French claims; that I am well seized of the aforesaid premises, as of a good and indefeasible estate in fee simple; that I have good, right, and lawful authority to sell and convey the same as aforesaid; that they are free from all incumbrances, and that I will warrant and defend the said premises in the quiet and peaceable possession of the said John McDougal, his heirs and assigns, against the claims of all persons whomsoever forever.

In witness whereof, I have hereunto set my hand and seal this twenty-eighth day of September, in the year of our Lord one thousand eight hundred and forty-eight, (1848.)

THOMAS WREN. [SEAL.]

STATE OF ILLINOIS, *Peoria county:*

Before me, Jacob Gale, clerk of the circuit court of said Peoria county, this day personally appeared Thomas Wren, who is personally

known to me to be the real person whose name is subscribed to the within and foregoing deed as having executed the same, and
115 acknowledged that he executed the same.

Witness my hand and the seal of said court, at Peoria, this 29th day of September, A. D. 1848.

[SEAL.] JACOB GALE, *Clerk.*

STATE OF ILLINOIS, *County of Peoria:*

RECORDER'S OFFICE.

I, Charles Kettelle, recorder in and for the county aforesaid, do hereby certify the foregoing deed is duly recorded in said office, in book W, pages 145 and 146, on this 29th day of September, A. D. 1848.

CHARLES KETTELLE, *R. P. Co.*

12. A deed from John W. McDougal and others to Charles Ballance, dated Aug. 8, 1864, which is as follows:

This indenture made this eighth day of August, in the year of our Lord one thousand eight hundred and fifty-four, between John Reynolds and Sarah K., his wife; John McDougal and Mary A., his wife; Josiah E. McClure, John E. McClure, and William Kellogg, all of Peoria city, Peoria county, and State of Illinois, of the first
116 part, and Charles Ballance, of the same place, of the second part, witnesseth: that the said parties of the first part, for and in consideration of the sum of one dollar, and other valuable consideration, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensealing and delivery of these presents, the receipt whereof is hereby acknowledged, have remised, released, sold, and forever quit-claimed, and by these presents do remise, release, sell, and forever quit-claim, unto the said party of the second part, and to his heirs and assigns forever, so much of a certain piece or pieces or parcels of lands, situate in said city of Peoria, and known and described as lots No. one, (1,) two, (2,) and three, (3,) in block No. fifty (50) in Bigelow and Underhill's addition to Peoria, as is covered by French claim No. seven, (7,) as represented in Brown's plat or survey, approved by the surveyor general of Illinois and Missouri, under date of September 1st, 1840.

To have and to hold the above-described premises, with all the privileges and appurtenances thereunto belonging, to the party of the second part, his heirs and assigns, forever.

117 In witness whereof, the said parties of the first part, have hereunto set their hands and seals the day and year first above written.

J. E. McCLURE.	[SEAL.]
WM. KELLOGG.	[SEAL.]
JOHN REYNOLDS.	[SEAL.]
SARAH REYNOLDS.	[SEAL.]
J. E. McCLURE.	[SEAL.]
JNO. McDOUGAL.	[SEAL.]
MARY A. McDOUGAL.	[SEAL.]

Signed, sealed, and delivered in presence of—

——— ———.

STATE OF ILLINOIS, *Peoria county:*

I, M. R. Owen, a justice of the peace for said county, do certify that on this day personally appeared before me John Reynolds, Sarah K. Reynolds, John McDougal, Mary A. McDougal, Josiah E. McClure, John E. McClure, William Kellogg, whose names appear subscribed to the foregoing deed of conveyance as having executed the same, and who are personally known to me to be the real persons, who and in whose names the acknowledgment is proposed to be made, and acknowledged the execution thereof as their voluntary act and deed for the uses and purposes therein expressed. And Sarah K.
118 Reynolds and Mary A. McDougal, wives of the said John Reynolds and John McDougal, having been by me made acquainted with the contents of the said deed, and by me examined separate and apart from their said husbands, whether they had executed the same, and relinquished their dower to the lands and tenements therein mentioned, acknowledged that they had done so voluntarily and freely, and without compulsion of their said husbands, and do not wish to retract.

Given under my hand and seal of office at Peoria, this 12th day of December, A. D. 1854.

M. R. OWEN, *J. P.* [L. S.]

Filed in the recorder's office of Peoria county, February 1st, A. D. 1855, and recorded in book L A, pages 161 and 162.

JACOB GALE, *Recorder.*

119 13. It was admitted, (though the deed was not present) that before the commencement of this suit, said McDougall had conveyed one undivided fourth part of the premises in dispute to William Kellogg, dec'd, the original defendant.

14. A deed from John Baptiste Maillet to Isaac Darneill, dated in 1801, which is as follows:

This indenture, made this sixth day of July, in the year of our Lord one thousand eight hundred and one, between Jean Baptiste Maillet, of the village of Peoria, upon the Illinois river in the Indiana territory, of the one part, and Isaac Darneille, of the same place, of the other part, witnesseth, that the said Jean Baptiste Maillet, on his part, for and in consideration of the sum of two hundred dollars currency of the United States to him in hand paid, the receipt whereof he doth hereby acknowledge, hath given, granted, bargained, sold, aliened, enfeoffed, and confirmed, and by these presents doth give, grant, bargain, sell, alien, enfeoff and confirm unto the said Isaac Darneille, his heirs and assigns forever, all that tract or parcel
120 of land lying and being upon the Illinois river, adjoining the said village of Peoria, containing eight hundred acres, being a donation of four hundred acres as a head of a family in the year one thousand seven hundred and eighty-three, and an improvement right of four hundred acres which the said Jean Baptiste Maillet holds under an act of Congress bearing date the third day of March, one thousand seven hundred and ninety-one, and bounded as follows, to

wit: Beginning at a stone below the gate of the said Isaac Darneille, in his lot in the said village, and running thence southwest to the corner of the stable of the said Maillet, thence west, and from the said stone north, running the said lines north and west so as to include the said quantity of four hundred acres of a donation right, and four hundred acres as an improvement right, in all, the quantity of eight hundred acres of land, together with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining, unto the said Isaac Darneille, his heirs and assigns, forever: to have and to hold the said tract or parcel of land,
121 containing eight hundred acres as aforesaid, together with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining, unto the said Isaac Darneille, his heirs and assigns, forever.

And the said Isaac Baptiste Maillet, for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said Isaac Darneille, his heirs, executors, administrators, and assigns, that the said tract or parcel of land containing eight hundred acres, together with all and singular the privileges and appurtenances thereunto belonging or in anywise appertaining, unto the said Isaac, his heirs, &c. He the said Jean Baptiste Maillet, his heirs, &c., will forever warrant and defend, by these presents, unto the said Isaac Darneille, his heirs and assigns, forever, to the only proper use, benefit, and behoof of him, the said Isaac Darneille, his heirs and assigns, forever.

In testimony whereof, the said Jean Baptiste Maillet hath hereunto set his hand and affixed his seal, at Peoria aforesaid, the day and year first above written.

MAILLET. [SEAL.]

122 LOUIS LABOSSIERE, *Temoins.*
ANT. DELORD, *Temoins.*
RAPHAEL BILANGIE, *Temoin.*

N. B.—Erased the words "lot of Chamberland," and interlined the words "corner of the stable of the said Maillet," before the execution.

PEORIAS, *the* 17*th May*, 1802.

Personally came before me, the subscriber, one of the justices, the abovenamed Lewis Labossiere and Raphael Bilangie, who being first sworn on the holy evangelist of Almighty God, deposeth and saith that they were, both of them, present when the abovenamed Jean Baptiste Maillet signed, sealed, and delivered the above deed of conveyance as his proper act and deed.

Given under my hand the date above.

ANTO. DESCHAMPS, *Juge a Paix.*

PEORIAS, *the* 17*th May*, 1802.

Personally came before me, the subscriber, Antoine Deschamps, called Delord, who being first sworn on the holy evangelist of Almighty God, deposeth and saith that he was personally

123 when the abovenamed Jean Baptiste Maillet signed, sealed, and delivered the above deed of conveyance as his proper act and deed.

Given under my hand the date above.

LOUIS LABOSSIERE, *Juge a Paix.*

Recorded the thirtieth of September, one thousand eight hundred and nine.

JOHN HAY, *Recorder.*

STATE OF ILLINOIS, *St Clair county*:

RECORDER'S OFFICE, *Dec. 2d*, 1848.

I certify that the foregoing or within instrument of writing is a true and correct copy of the original as recorded in book B, pages 498 and 499 of this office.

Given under my hand and seal of office the date above.

[SEAL] RICHARD HAY, *Recorder*,
By WM. S. THOMAS, *Deputy*.

15. A deposition of Isaac Underhill, which is as follows:

Deposition of Isaac Underhill taken at Peoria, Illinois, on the 19th day of July, A. D. 1856, before George T. Metcalfe, U. S. commissioner, on behalf of defendant.

124 Examined by defendant's counsel:

My name is Isaac Underhill; my age, forty-eight years; and I reside in the city and county of Peoria, in the State of Illinois. I first came to Peoria in 1833, and in 1834 I purchased the southeast quarter of nine, township eight north, range eight east, in Peoria county, of John L. Bogardus, and received a deed of conveyance from him therefor. At that time there were some houses on the tract and a ferry landing, and I entered into possession of these, claiming the whole tract. Soon after, and within one month, I gave an interest therein to Lewis Bigelow, and we jointly held possession of the land and improvements till 1836, when the tract was surveyed and laid out in blocks and lots; and thereafter we continued to hold the possession until, from time to time, we sold lots to different persons and gave possession thereof to each purchaser. About the year 1841 lot one, in block fifty, in said tract of land, was sold to Aquila Wren, and possession was given him, and since that time it has been in the possession of Henry Hahn, Thomas Wren, John McDougall, and
125 William Kellogg, successively, who all held and claimed said possession under the title so derived from John L. Bogardus, as aforesaid. About ten years ago there was a steam carding machine on said lot, and for six or seven years past there has been a large warehouse on the lot; the steam carding machine remained on the lot till just before the present warehouse was built, and was taken away to make room for said warehouse. I and all the persons above named who held under me, held possession of the lot under the Bo-

gardus title, and adversely to the persons who claimed under what are called and known in Peoria as French claims. Previous to my aforesaid purchase of said land from Bogardus, he, the said Bogardus, had proved and had been allowed a pre-emption right to said land under the pre-emption law of 5th April, 1832, but the land could not, at that time, be paid for by Bogardas, because no official plat of the land had been furnished by the surveyor general to the land office of the proper district. In November, 1837, I procured from
the surveyor general's office at St. Louis a duly certified plat
126 of the said land, carried it to the land office at Quincy, Illinois, made full payment for the land in the name of John L. Bogardus, but with my own money, and received the usual duplicate certificate from the register and the receiver in the name of John L. Bogardus, for the said land. In the year 1838 a patent from the United States for the said southeast quarter issued to said John L. Bogardus, containing, however, a clause which made said land subject to the claims of all persons claiming under the act of Congress of March 3, 1823.

No change of possession in regard to said southeast quarter, or any part thereof, was, however, made in consequence of the language of said patent, or for any other cause, but the said lot one, in block fifty, was held as theretofore it had been held, adversely to French claimants, and said lot has always been so held up to this time.

ISAAC UNDERHILL.

16. Another deposition of Underhill, which is as follows:

127 Deposition of Isaac Underhill, taken at Peoria, Illinois, on the 16th day of May, 1864, before Leslie Robison, notary public, on behalf of defendant.

I do further certify that the said Isaac Underhill, being by me carefully examined, cautioned, and duly sworn to testify the whole truth, says: "That he has lived in the city of Peoria and State of Illinois most of the time since A. D. 1834, and all the time since 1840; that he is acquainted with and has been into lot No. 1, in block No. 50, Bigelow and Underhill's to the city of Peoria, Illinois, since it was laid out in 1836, and knew the ground since 1834; that he was one of the proprietors of said addition; that he sold said lot No. one on 7th day of December, 1841, to Aquilla Wren; that had the same enclosed with a paling fence about two years previously; that about the year following, that is, 1842, said Aquilla Wren leased said lot to Henry Hahn, who erected thereon a carding factory. So soon as Kellogg, McClure, and McDougall erected
their warehouse, now standing on said lot, the one erected by
128 Hahn was removed in adjoining lot. I, as well as those holding under me, held adverse to those claiming under *those claiming under those claiming under* the act of Congress passed 1823, and held under the title of John L. Bogardus, and that all those persons aforesaid were residents of Peoria, and occupied the lot aforesaid as a place of business, except Wren and myself, who were house-

keepers, and residents in Peoria; that said lot No. one has been occupied by me or some one under me since 1836 or 1837, by building or enclosures.

ISAAC UNDERHILL.

17. A deposition of William E. Mason, which is as follows:

Deposition of William E. Mason.

Deposition of William E. Mason, taken at Peoria, Illinois, on the 19th day of July, A. D. 1856, before George T. Metcalfe, U. S. commissioner, on behalf of defendant.

Examined by defendant's counsel:

129 My name is William E. Mason; my age, forty-six years; and I reside in the city and county of Peoria, in the State of Illinois; I have resided in Peoria twenty-two years, and during all that time I have resided either on the southeast or the southwest quarter of section nine, in township eight north, range eight east, in Peoria. When I first came to Peoria I found Isaac Underhill, in connexion with Lewis Bigelow, claiming to be the owners of said southeast quarter and having several houses and a ferry-landing thereon. I understood from said Underhill that he and Bigelow claimed said southeast quarter by purchase from John L. Bogardus, and adversely to what are called and known in Peoria as French claims; and it was commonly known by all persons in Peoria that said Bigelow and Underhill held possession of said lands adversely to said French claims, and under said John L. Bogardus. More than fifteen years ago my evidence was taken in behalf of persons claiming under the Bogardus title, to resist and defeat, if possible, the French claimants, and those claiming under the French claimants. I have been
130 quite familiar with the controversies between the conflicting claimants to said southeast quarter, and have several times testified as a witness on the subject, and I have never known any case in which the claimants under the Bogardus title have not resisted the claimants under the French grant, and held adversely to them.

WILLIAM E. MASON.

18. A deposition of George T. Metcalfe, which is as follows:

Deposition of George T. Metcalfe.

Deposition of George T. Metcalfe, taken at Peoria, Illinois, on the 19th day of July, A. D. 1856, before George S. Blakely, notary public, in behalf of the defendant.

My name is George T. Metcalfe; my age is upwards of forty years, and I reside in the city and county of Peoria, in the State of Illinois; I am an attorney-at-law in this State, and have been for nearly twenty years; I am a son-in-law of the late Lewis Bigelow, of Peoria,
131 and was administrator on his estate, and I have had good deal of connexion with and knowledge of the controversies grow-

ing out of the conflicting claims to the southeast quarter of section nine, township *township* eight north, range eight east, in said Peoria, and I know of my own knowledge that Isaac Underhill and Lewis Bigelow, from the time I first knew them in 1856, always denied that they held their title to said southeast quarter under any French claim or claimant, but under John L. Bogardus, and they always held possession adversely to the French claimants, and, so far as I know, the same is true of all those who held under Bigelow and Underhill. I know that Charles Ballance, who holds some lots under Bigelow and Underhill in said southwest quarter, holds them and all other property he owns which may be or is claimed by the French against French claimants, and adversely to them, and has done so ever since I knew him, and more than fifteen years ago he procured from me an affidavit to use in resisting and overturning all their claims on the southeast quarter aforesaid.

GEO. T. METCALFE.

132 19. He offered the following agreement, the signatures to the same not being disputed:

Forsyth *vs.* Bryan & Rouse; same *vs.* Reynolds; same *vs.* McClure; same *vs.* Kellogg.

It is agreed that upon the trial of the above cases that it shall be admitted that the plaintiff has the title of Thomas Forsyth in and to the land sued for, by descent and purchase and conveyance, and also that the defendants have had the actual possession of the land for which they are respectively sued, by residence thereon, for ten years next preceding the commencement of these suits, and that John L. Bogardus, under whom they claim, had possession of part of the SE. fractional quarter, section nine, in township eight north, of range eight east, upon which the land sued, for is situated, claiming the same under pre-emption right more than twenty years before the commencement of these suits; but he never had the actual possession of that part of said fractional quarter sued for in these sections; and that said defendants respectively had vested in them before the commencement of this suit all the right, title, and interest which said Bogardus's possession, pre-emption right, and patent conferred on him.

133

WILLIAMS & LAWRENCE,
Att'y for Pl'ff.

C. BALLANCE,
Attorney for Def'ts.

To the reading of which to the jury the plaintiff objected, and the court sustained said objection, and said paper was ruled out for the reason that the defendant had been notified in open court at a former term that the agreement was only intended for a particular trial, by counsel who had long ceased to have connexion with the case, and defendant then and there excepted to said ruling.

20. He read a certified copy of the proceedings of the board on land claims at Detroit, which is as follows:

134 *Transcript of the minutes of the proceedings of the land office at Detroit, commencing the 2d day of January and ending 27th of February*, 1809, *both days inclusive.*

[Extract No. 1.]

On Monday, the third day of January, 1809, the board met at 9 in the forenoon, pursuant to adjournment, and there being no business, adjourned to Wednesday next at 9 in the forenoon.

[Extract No. 2.]

* * * * * * * *

On Monday, the 20th day of February, 1809, the board met at 9 in the forenoon, pursuant to adjournment.

* * * * * * * *

THOMAS FORSYTH.—No. 618.

The board took into consideration the claim of Thomas Forsyth to a tract of land situate at Gross point, and the notice filed by Sol. Sibley, esq., his attorney, the 10th Dec'r last, was read in the words and figures following, to wit:

[Extract No. 3.]

To the register of the United States land office at Detroit.

135 SIR: Notice is hereby given that Thomas Forsyth makes entry and claim with the commissioners of the land office at Detroit, to have and hold to himself, his heirs and assigns, a certain farm or tract of land within the district of Detroit and Territory of Michigan, upon the lake St. Clair, of six acres in front by 100 acres in depth, making 600 acres, more or less, bounded in front by Lake St. Clair, in rear by vacant lands, on the upper side by other lands or farms of claimant, on the lower side by a tract of land or farm of John Kinzie, sets up title and claim under deed of conveyance of William Forsyth, his late father, deceased, of the 20th day of December, 1794; likewise sets up title and claim by virtue of long, peaceable, and continued occupancy, possession, and improvements had, made, and done by himself and those under whom he claims and derives title.

For THOMAS FORSYTH,
SOL'O SIBLEY, *Att'y and Ag't.*

December 10, 1808.

136 This tract contains by estimation 600 acres, it being six acres in front by one hundred in depth, bounded in front by Lake St. Clair, in rear by unlocated lands, on the upper side by lands of the claimant, and on the lower side by lands of John Kinzie.

Whereupon Simon Yax was brought forward as a witness in behalf of the claimant, who being duly sworn deposed and said that, previous to the 1st July, 1796, William Forsyth cultivated the premises as tenant to the claimant, since which time the claimant has caused the premises to be cultivated every year to this day; about 18

or 20 acres are under cultivation. Aud thereupon it doth appear to the commissioners that the claimant is entitled to the above-described tract of land, and that he have a certificate thereof, which certificate shall be No. 618, and that he cause the same to be surveyed, and a plot of the survey, with the quantity of land therein contained, to be returned to the register of the land office at Detroit.

137 THOMAS FORSYTH.—No. 619.

The board took into consideration the claim of Thos. Forsyth to a tract of land situate at Gross point, which was entered with the former commissioners of the land office at Detroit, in vol. 1, page 454, under the date of 23d December, 1805.

This contract contains by estimation 366⅔ arpents, it being three arpents and ⅔ of an arpent in front by one hundred arpents in depth, bounded in front by lake St. Clair, in rear by unlocated lands, above by lands of Robert Forsyth, and below by lands of the claimant.

Whereupon Simon Yax was brought forward as a witness in behalf of the claimant, who being duly sworn deposed and said that, previons to the 1st July, 1796, Pierre Mayett was living on the premises as tenant of the heirs of the late Wm. Forsyth, dec'd; that from that time to four or five years ago, the premises have always been occupied by tenants, and that for these 4 or 5 years, the premises have remained idle.

The said Thomas Forsyth claims by virtue of a deed of partition recorded with the former commissioners of the land office
138 at Detroit, in vol. 1, page 150. Postponed.

* * * * * *

REUBEN ATTWATER.
PETER ANDRAIN.
JAMES ABBOTT.

[Extract No. 4.]

139 *Index to the transcript of decisions of the commissioners of the land office at Detroit for Jan'y and Feb'y*, 1809.

Name of the person.	Decision of commissioners.		Certificate.		Report of the former commissioners. Date of their proceedings thereon.
	Date.	Page of transcript.	Date.	Number of acres.	
[Extract No. 6.]	[18 Jan., 1809.]	.....	[18 Feb., 1809]	.....	[Vol. 1, page 359, 3d Dec., 1805. Rejected.]
Thomas Forsyth	17 Feb., 1809	34	17 Feb., 1809	600	
Robert Forsyth	17 Feb., 1809	35	17 Feb., 1809	366⅔	[Vol. 1. page 449, 23d Dec., 1805. Rejected.]

[Extract No. 7.]

140 *Transcript of the minutes of the proceedings of the commissioners of the land office at Detroit from the 2d day of April to the 29th of June*, 1810.

On Monday, the 2d day of June, 1810, the board met at 9 in the forenoon, pursuant to adjournment.

* * * * * * * *

On Friday, the 29th day of June, 1810, the board met at 9 in the forenoon, pursuant to adjournment.

[Extract No. 8.]

THOMAS FORSYTH.—No. 619.—RECONSIDERED.

The board reconsidered the claim of Thomas Forsyth, No. 619, to a tract of land situate on lake St. Clair, which was postponed on the 20th day of February last, in vol. 7, page 35, and thereupon it doth appear to the commissioners that the claimant is entitled to the said tract of land, and that he had a certificate thereof, which certificate shall be No. 619; and that he cause the same to be surveyed, and a plot of the survey with the quantity of land therein contained
141 to be returned to the register of the land office at Detroit.

And then the board adjourned to Monday next at 9 in the forenoon.

REUBEN ATTWATER.
PETER ANDRAIN.
JAMES ABBOTT.

[Extract No. 9.]

142 *Index to the transcript of decisions of the commissioners of the land office at Detroit, 1st April to 30th June*, 1810.

Name of the person.	Decision of commissioners.		Certificate.		Report of the former commissioners.
	Date.	Page of transcript.	Date.	Number of acres.	Date of their proceedings thereon.
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[Extract No. 10.]	[22d April, 1810.]	----------	[22d April, 1810.]	----------	----------
Thomas Forsyth	29 June, 1810.	26	29 June, 1810.	366¾	----------

GENERAL LAND OFFICE.

I, Richard M. Young, Commissioner of the General Land Office, do hereby certify that the foregoing extracts, Nos. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, on pages 1 to 6, inclusive, are true extracts from the original transcripts in this office.

In testimony whereof, I have hereunto subscribed my name and caused the seal of this office to be affixed, at the city of Washington, this 31st day of March, 1849.

[SEAL.] RICHARD M. YOUNG, *Commissioner.*

143 GENERAL LAND OFFICE, *March 31st*, 1849.

SIR: Pursuant to your application of the 7th instant, I herewith transmit to you an exemplification, duly certified under seal, containing extracts from the transcripts in this office in the following cases:

(1st.) Extract from the transcripts of the proceedings of the board of commissioners in 1809, in the claims Nos. 618 and 619 of Thomas Forsyth; manuscript transcript No. 16, pages 1, 34, 35, 37.

State Papers, Public Lands, D. Green, vol. 1, pages 460, 461, and

(2d.) Extracts from the transcript of the proceedings of the board in 1810, in the claim No. 619; manuscript transcript page 1, 26, 27.

Land volume, State Papers, page 493.

Very respectfully, your ob't servant,

RICHARD M. YOUNG,
Commissioner.

C. BALLANCE, Esq., *Peoria, Illinois.*

144 21. A patent to Thomas Forsyth, which is as follows:

Certif. 619.

James Madison, President of the United States of America, to all to whom these presents shall come, greeting:

Know ye, that Thomas Forsyth, having lodged in the treasury a certificate of the register of the land office at Detroit, whereby it appears that the said Thomas Forsyth is confirmed, by virtue of an act of Congress entitled "An act regulating the grants of land in the Territory of Michigan," in his claim to a certain tract of land, containing three hundred twenty-four and $\frac{85}{100}$ acres, situate on the border of lake St. Clair, bounded and described as follows, to wit: Beginning at a post standing on the border of lake St. Clair, between this tract and a tract confirmed to the claimant; thence north sixty-four degrees west, three hundred chains forty-five links to a post; thence north twenty-six degrees east, ten chains eighty-three links to a post, the southwest corner of a tract confirmed to Robert Forsyth; thence south sixty-four degrees east, two hundred ninety-eight chains fifty-four links, to a post standing on the border of lake St. Clair; thence along the border of said lake south sixteen degrees west, eleven

145 chains, to the place of beginning—

There is granted by the United States unto the said Thomas Forsyth the tract or parcel of land above described: to have and to hold the said tract or parcel of land, with the appurtenances, unto the said Thomas Forsyth, his heirs and assigns, forever.

In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereuto affixed. Given under my hand, at the city of Washington, the tenth day of July, in

the year of our Lord one thousand eight hundred and eleven, and of the independence of the United States of America the thirty-sixth.

By the President:

_____,

Secretary of State.

22. A patent issued to the same, which is as follows:

Cert. No. 618.

James Madison, President of the United of America, to all to whom these presents shall come, greeting:

Know ye, that Thomas Forsyth, having lodged in the trea-
146 sury a certificate of the register of the land office at Detroit, whereby it appears that the said Thomas Forsyth is confirmed by virtue of an act of Congress entitled "An act regulating the grants of land in the Territory of Michigan," in his claim to a certain tract of land, containing five hundred twenty-seven and $\frac{1}{10}$ acres, situate on the border of lake St. Clair, bounded and described as follows, to wit: Beginning at a post standing on the border of lake St. Clair, between this tract and a tract confirmed to John Kinsie; thence north sixty-four degrees west, three hundred two chains fifty-five links to a post; thence north twenty-six degrees east, seventeen chains fifty links, to a post, the southwest corner of a tract confirmed to the claimant; thence south sixty-four degrees east, three hundred chains forty-five links to a post standing on the border of lake St. Clair; thence along the border of said lake south thirty-one degrees west, seven chains; thence south eleven degrees thirty minutes west, ten chains eighty-eight links, to the place of beginning—

There is granted by the United States unto the said Thomas Forsyth the tract or parcel of land above described: to have and to hold the said tract or parcel of land, with the appurtenances, unto the said Thomas Forsyth, his heirs and assigns, forever.

147 In testimony whereof, I have caused these letters to be made patent, and the seal of the United States to be hereunto affixed.

Given under my hand, at the city of Washington, the seventh day of October, in the year of our Lord one thousand eight hundred and eleven, and of the independence of the United States of America the thirty-sixth.

By the President:

_____,

Secretary of State.

148 23. It was admitted that the Thomas Forsyth who claimed and obtained patents for those claims at Gross point, near Detroit, was the same Thomas Forsyth who claimed said lot 7 before the register at Edwardsville, and to whose legal representatives said patent to said lot was issued. The plaintiff offered the will of Thomas Forsyth, which is as follows:

In the name of God, amen. I, Thomas Forsyth, of St. Louis county, in the State of Missouri, being in full health and vigor of mind, do

make this my last will and testament. First. I devise and bequeath to my son, Robert Forsyth, in fee simple, my farm in St. Louis county, on which I reside, being the same purchased by me from the heirs of Papin, and containing four hundred arpents, together with all the cattle, implements of husbandry, and kitchen furniture and one bed, and all the tables and chairs; also a black man, slave, aged about thirty years, named Frederick, and his wife a black woman of about the same age, named Phillis, and her three children, named Sarah, Kesiah and George, together with all the children that may hereafter be born of the said Phillis.

149 Second. To my son Thomas, I devise and bequeath in fee my lot of ground in the city of St. Louis, being the same bought by me of Philipem & Labbadie, situate on Church street, on the east side thereof, in the upper part of the town; also a black boy named Lewis, aged about twenty-one years.

Third. To my daughter Mary, I devise and bequeath in fee simple my lot of ground in said city of St. Louis, situate in the upper part of town, on the west side of Main street, being the same purchased by me from William C. Carr and wife, on which is a small tenement; also a yellow boy named Jim, aged about ten years; also all my silver plate, my desk, book-case, beds and bedding, with the exception of the bed above given, and all moneys that I may die possessed of, or that may then be due to me; and whereas my said son Thomas is now in Mexico and is liable to casualties, it is my will that in case of his death before me, that all his portion above bequeathed to him, shall go to my said daughter Mary, and I hereby devise and bequeath the same to her, on such contingency. And it is further my will that even in case he should outlive me, but should die without leaving lawful heirs of his body, that then, his portion above shall go

150 to my said daughter Mary, in fee simple; and I do devise and bequeath it accordingly. And I further will and declare, that all the residue of my property, whether real, personal, or mixed which I now own, or may die possessed or owning, comprehending debts and all effects (with the exception of a little black boy named Bill, about seven years old) I devise and bequeath to my said daughter Mary; and the said black boy Bill, I give and bequeath to my grandson William, the son of my son Robert. I hereby nominate and appoint Edward Bates, esq., attorney-at-law, of St. Louis, and Robert Allen Forsyth, paymaster of U. S. army, of Detroit, in Michigan Territory, executors of this my last will and testament; and it is my will and pleasure that if either of them declines acting, then such person shall act as executor in his stead as shall be nominated by the one declining to act. I hereby nominate as guardians of my daughter Mary, till she arrives at the age of twenty-one years, the said Edward Bates and Robert Allen Forsyth, or such person or persons as said Bates and Robert Allen Forsyth appoint for that purpose. I hereby revoke all other and former wills made by me.

In testimony whereof, I have hereunto set my hand and seal this eleventh day of September, in the year of our Lord one thou-

151 sand eight hundred and thirty-three.

ROBERT FORSYTH. [SEAL.]

The above and foregoing instrument was, on this eleventh day of September, 1833, signed, sealed, published, and declared as his last will and testament by Thomas Forsyth, in our presence, who in his presence, and in the presence of each other, and at his request, subscribed our names hereto as witnesses.

WILSON P. HUNT.
ISRAEL CANFIELD, JR.
F. PROVENCHERE.

STATE OF MISSOURI, *County of St. Louis, ss:*

Be it remembered that on the first day of November, in the year of our Lord eighteen hundred and thirty-three, before me, the clerk of the county court within and for the county aforesaid, personally appeared Wilson P. Hunt and Ferdinand Provenchere, two of the subscribing witnesses to the foregoing and annexed instrument of writing, who, being duly sworn, upon their oaths according to law severally depose and say that they were present and did see Thomas Forsyth sign and execute, the same, and heard him publish, pronounce, and declare the same to be his last will and testament, and that
152 at the time of so doing he, the said testator, was of sound and disposing mind, to the best of their knowledge, observation, and belief; and that they, the said deponents, and Israel Canfield, the other subscribing witness to the same, subscribed their names thereto, in the presence and at the request of the testator, and in the presence of each other, as witnesses to the same.

In testimony whereof, I have hereunto set my hand and the seal of said court, at the city of St. Louis, this first day of November, in the year of our Lord eighteen hundred and thirty-three.

HENRY CHOUTEAU, *Clerk.*

STATE OF MISSOURI, *County of Saint Lewis, ss:*

I, Peter Ferguson, judge of probate of the county of Saint Louis, in the State of Missouri, certify that the foregoing is a true copy of the last will and testament of Thomas Forsyth, deceased, and of the probate thereof, as the same now remains of record in my office, in the record of letters and wills, book B, page one hundred and sixty-four and following.

In testimony whereof, I hereto set my hand and affix the seal of the probate court of the county of Saint Louis, at office in said county, and in the State of Missouri, this sixteenth day of November, in the year of our Lord one thousand eight hundred and forty-four.

[SEAL.] PETER FERGUSON, *Judge of Probate.*

153 The above was all the evidence given in the case.

Whereupon defendant moved the court to instruct the jury as follows, to wit:

which instructions so moved for by said defendant, the court refused to give, but instructed the jury as follows, to wit:

154 To which opinion of the court in ruling out said instruction asked for by said defendant, and in giving the instructions that were given, and all other opinions adverse to said defendant, he then and during the progress of the trial excepted, and prayed that this his bill of exceptions be sealed, signed, and allowed.

DAVID DAVIS. [SEAL.]
THOMAS DRUMMOND. [SEAL.]

Indorsed: Filed March 29th, 1865.

WM. H. BRADLEY, *Cl'k.*

155 On this day, to wit, the 19th day of April, A. D. 1865, came said defendants, by their attorney, and filed in said clerk's office their appeal bond in said entitled cause, which said bond is in words and figures following, to wit:

In the United States circuit court for the northern district of Illinois of the March term, A. D. 1865.

ROBERT FORSYTH
vs.
URIEL H. KELLOGG *et al.*, heirs-at-law of William Kellogg, dec'd, and Charles Ballance. } In ejectment.

Know all men by these presents that we, Charles Ballance and Charles Holland, are held and firmly bound unto said Robert Forsyth in the penal sum of fifteen hundred dollars lawful money of the United States, for the payment whereof, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly by these presents.

The condition of the above obligation is such that whereas
156 the above-named plaintiff did at the present term of said circuit court recover judgment against said defendants for certain real estate in the city of Peoria, which is fully described and set forth in the declaration in said cause; and whereas said defendant, Ballance, has this day sued out a writ of error to the Supreme Court of the United States to obtain the reversal of said judgment: Now, therefore, if the said defendant, Ballance, shall well and truly prosecute said writ of error with effect and without delay, and answer all damages and costs, if he fail to make good his said plea, then the above obligation to be null and void, but otherwise to remain in full force and virtue.

Witness our hands and seals this 19th day of April, A. D. 1865.

C. BALLANCE. [SEAL.]
C. HOLLAND. [SEAL.]

Approved.

THOMAS DRUMMOND

Indorsed: Filed April 19th, 1865.

WM. H. BRADLEY, *Cl'k.*

157 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said northern district of Illinois, do hereby certify the above and foregoing, from pages one to one hundred and fifty-six, inclusive, to be a true and complete transcript of the record of all the proceedings which have been had in the cause in said court wherein Robert Forsyth is the plaintiff and Urial H. Kellogg *et al.* are defendants, (with the exception of the instructions asked and the instructions given, referred to in bill of exceptions on page 153 herein, and which have not been furnished to me,) as appears from the record of said court now remaining in my custody; and that the original writ of error and citation issued herein by the plaintiffs in error are hereto annexed to this transcript.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district of Illinois, this first day of December, A. D. 1865.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-ct. rev. stamp, cancelled.]

158 Said appellants, by Ballance, their attorney, come and as *as* to said record and proceedings, say there is manifest error therein, in this, to wit, said verdict and judgment were in favor of said plaintiff below, whereas by the law of the land they ought to have been in favor of said defendant below; and in this, to wit, said court refused to give the instruction prayed for by said plaintiffs, (defendants below,) whereas they were legal and proper instructions; and in this, to wit, said court erred in the instructions it gave to the jury, which were illegal and improper; and in this, to wit, said *said* court erred in refusing to permit said deed from John Baptist Maillet to Isaac Darnielle, to be read to the jury; and in this, to wit, said court erred in refusing to let said agreement signed Williams & Lawrence, C. Ballance, to be read to the jury; and in this, to wit, said court erred in refusing to give a new trial to said defendants below; for all which errors, and many others apparent in said record, said appellants pray that said judgment be reversed and for nothing esteemed, and that they be restored to all which by said erroneous judgment they have been deprived of.

C. BALLANCE.

Filed December 11, 1865.